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AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 177. 19

ABRAHAM SHENFIELD, APPELLANT,

vs.

THE NASHAWANNUCK MANUFACTURING COMPANY, CHRISTOPHER MEYER, PRESIDENT; GEORGE H. NEWMAN, TREASURER, AND E. E. CANDEE, AGENT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

RECORD FILED OCTOBER 14, 1886.—AGREED RECORD FILED FEBRUARY 3, 1890.

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1 Supreme Court of the United States.

ABRAHAM SHENFIELD, Complainant & Appellant,
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.*, Defendants & Appellees.

Appeal from the Circuit Court of the United States for the Southern District of New York.

It is stipulated by and between the counsel for the respective parties to the above-entitled case that the annexed record, together with the opinion, final decree, petition on appeal, bond on appeal, and citation, heretofore filed with the clerk of the Supreme Court of the United States, shall be the record to be printed and used as the case on the appeal to the Supreme Court of the United States in this case.

New York, January 31st, 1890.

E. N. DICKERSON, JR.,
Counsel for Complainant & Appellant.
EDMUND WETMORE,
Counsel for Defendants & Appellees.

2 [Endorsed:] Supreme Court of the United States. Abraham Shenfield, compl't and appellant, *vs.* Nashawannuck Manufacturing Company *et al.*, def'ts & appellees. Stipulation *in re* record for use in Supreme Court. E. N. Dickerson, Jr., counsel for compl't and appellant, Temple Court, N. Y. city, N. Y.

3 Circuit Court of the United States, Southern District of New York.

ABRAHAM SHENFIELD
against
NASHAWANNUCK MANUFACTURING COMPANY, CHRISTOPHER MEYER, President; George H. Newman, Treasurer; E. E. Candee, Agent.

In Equity.

To the honorable the judges of the circuit court of the United States in and for the southern district of New York:

Abraham Shenfield, of the city, county, and State of New York, and a citizen of said State, brings this his bill of complaint against the Nashawannuck Manufacturing Company, a corporation organized and existing under the laws of the State of Massachusetts, and having its principal place of business at the city of East Hampton, in the State of Massachusetts, and doing business, through its lawfully authorized agent, in the city and State of New York,
4 and against Christopher Meyer, president; George H. Newman, treasurer, and E. E. Candee, agent of said company.

And thereupon your orator complains and says that heretofore and before the 9th day of November, 1875, your orator was the

original and first inventor of a certain new and useful improvement in suspender button straps not known or used by others in this county, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application for a patent therefor.

And your orator further shows unto your honors that your orator, so being the inventor of said improvement, made application to the Commissioner of Patents in accordance with the then existing laws of the United States and complied in all respects with the conditions and requirements of said laws.

And thereafter, on the 9th day of November, 1875, letters patent of the United States numbered No. 169,885, signed, sealed, and executed in due form of law and bearing date the day and year last aforesaid, were issued to your orator, whereby there was secured to your orator and to his heirs and assigns, for the term of seventeen years from the 9th day of November, 1875, the full and exclusive right of making, using, and vending the said improvement throughout the United States and the territories thereof, as by a certified copy of said letters patent, in court to be produced, will more fully appear.

And your orator further shows that but for the infringement herein complained of and others of like character your orator would still be in the undisturbed possession, use, and enjoyment of the exclusive privilege secured by the said letters patent and in receipt of the profits of the same.

And your orator further shows unto your honors, as he is informed and believes, that since the date of said letters patent the defendants herein named, well knowing all the facts hereinfore set forth, and against the will of your orator and in violation of your orator's rights as aforesaid, have been and are now jointly infringing the said letters patent by making, using, and selling the said patented improvement or some material and substantial part thereof; all which acts and doings are contrary to equity and good conscience and tend to the manifest injury of your orator in the premises.

Forasmuch as your orator can have no adequate relief except in this court and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and upon their corporal oath and according to the best and utmost of their knowledge, remembrance, information, and belief full, true, direct, and perfect answer make to the matters hereinbefore stated and charged;

And that the defendants may be decreed to account for and pay over the income or profits thus unlawfully derived from the violation of the rights now vested in your orator since the date of said letters patent, and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction, issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendants, their

clerks, attorneys, agents, servants, and workmen, from any further construction, sale, or use in any manner of said patented improvement or any part thereof in violation of your orator's rights as aforesaid, and that the material now in possession or use of the said defendants may be destroyed or delivered up to your orator for that purpose.

And that your honors, upon the rendering of the decree above prayed, may assess or cause to be assessed, in addition to the profits to be accounted for by the defendants as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment under the circumstances of the willful and unjust infringement by said defendants as herein set forth.

6 And your orator further prays that a provisional or preliminary injunction be issued, restraining the said defendants from any further infringement of said letters patent pending this cause, and for such other and further relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said Nashawannuck Manufacturing Company, Christopher Meyer, president; George H. Newman, treasurer, and E. E. Candee, agent, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall shall seem proper and required by the principles of equity and good conscience.

DICKERSON & DICKERSON,
Solicitors for Complainant and of Counsel.

ABRAHAM SHENFIELD.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

On this 9th day of October, 1884, before me personally appeared Abraham Shenfield, complainant above named, who, being by me duly sworn, deposes and says that he is the complainant above named, and that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ABRAHAM SHENFIELD.

Sworn to before me this 9th day of October, 1884.

GEO. H. EVANS (13),
Notary Public, New York Co.

7 Circuit Court of the United States, Southern District of New York. In Equity.

ABRAHAM SHENFIELD
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.*

The Replication of the Above-Named Complainant to the Answer of the Above-Named Defendants.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

DICKERSON & DICKERSON,
Complainant's Solicitors.

8 United States Circuit Court, Southern District of New York. In Equity.

ABRAHAM SHENFIELD
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.*

Please take notice that the complainant in the above cause will proceed to take testimony therein under the 67th rule, equity, as amended, before a competent officer, on Monday, March 30, 1885, at eleven o'clock a. m., at our office, Temple Court, 5 and 7 Beekman street, New York city.

Dated New York, March 27, 1885.

DICKERSON & DICKERSON,
Compl'nt's Solicitors.

To Wetmore & Jenner, def'ts' solicitors.

9 United States Circuit Court, Southern District of New York.

ABRAHAM SHENFIELD
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.* } In Equity.

Testimony for complainant on final hearing, taken before George H. Evans, notary public, special examiner, by consent, under rule 67, as amended, of the United States Supreme Court.

NEW YORK, *March* 30, 1885.

Present: E. N. Dickerson, Jr., Esq., for complainant; Edmund Wetmore, Esq., for defendants.

Complainant's counsel offers in evidence Patent Office copy of patent to A. Shenfield, Nov. 9, 1875, No. 169,855.

Counsel for defendants admit that said copy may be taken as a duly certified copy.

Q. 1. What is your age, residence, name, and occupation?

A. Lemuel W. Serrell; I reside in Plainfield, in N. J., and am a solicitor of patents, doing business at 140 Nassau street, New York; age, fifty-six years.

Q. 2. Please state what experience you have had in your profession, and especially about suspenders.

A. I have been in the profession as a solicitor of patents for more than thirty-five years. I have had an extended experience in the business and have often been called as an expert in patent
10 cases. I am also very familiar with the state of the art in the manufacture of suspenders and suspender ends. I have procured several patents on suspender ends and conducted an interference in the Patent Office between the complainant and Schirmer and Betts.

Complainant's counsel offers in evidence a pair of suspenders, marks the same "Complainant's Exhibit Defendants' Suspenders." It is stipulated by defendants' counsel that these suspenders were made and sold by the defendants prior to the commencement of this action and subsequent to Nov. 9, 1875. It is further stipulated that the above stipulation may be withdrawn on the record by counsel for defendants at any time prior to the commencement of the defendants' testimony, and, if withdrawn, complainant shall have the privilege of introducing proof as to their manufacture and sale by the defendants; but if this stipulation be not withdrawn before the commencement of the defendants' testimony it shall stand as a stipulation in this case.

Q. 3. Have you read and do you understand the patent to the complainant heretofore offered in evidence?

A. I have read and I do understand the said letters patent, and I procured the same for complainant.

Q. 4. Please compare the ends on Complainant's Exhibit "De-

fendants' Suspenders" with the ends described and claimed in said letters patent.

A. Upon reference to the complainant's letters patent I find that it relates to a peculiar suspender end, the same being composed of a flat cord bent into a loop, laid flatwise, united at the inner edges, and connected at the upper ends to an attaching piece. Upon reference to Complainant's Exhibit "Defendants' Suspenders" I find that the same contains identically the device described and claimed in the said complainant's patent. The suspender ends are made *or* a flat braided cord bent into a loop, laid flatwise, united at their inner edges above the button-hole portion and connected to an attaching piece, the inner edges of the cords being attached together above the button-hole. I find that this attachment is made in two ways:

11 the edges of the braid are sewed together at intervals, and in addition a metal pin is thrust through the braid immediately above each button-hole and its ends folded back and clinched. This does not in any manner alter the character of the suspender end, and I find in the said letters patent that mention is made that the braid may be united above the button-hole by "sewing, knitting, or crocheting or otherwise," which I understand to include the devices made use of in Complainant's Exhibit Defendants' Suspender.

Cross-examination by Mr. WETMORE:

Cross-Q. 5. You state that the metal pin does not in any manner alter the suspender end; you mean by that that if the metal pin were removed the end would still, in your opinion, contain what you understand to be the patented invention?

A. I mean that the metal pin simply unites the inner edges of the flat cord immediately above the button-hole, and that pin is only one means of uniting the parts, and is substantially the same as sewing. If the material was firmly sewed together at the upper end of the button-hole the pin might be removed without injury.

Cross-Q. 6. Then is it essential, in your opinion, that the ends in question should either by the sewing or metal pins, or by knitting, crocheting, or the like be substantially united along the inner edges from the point above the button-hole to the attaching piece in order to contain the device which you understand to be described in the claim set forth?

A. It is essential, as I understand the said letters patent, that the inner edges of the braid be united above the button-hole in order to form a reliable button-hole. It is not necessary, according to my understanding of complainant's patent, that the whole of the edges of the braid above the button-hole to the attaching device be sewed together.

Cross-Q. 7. Then what you mean to say is that, as you understand it, it is only necessary that the cord should be united at a single edge, to wit, a point just above the button-hole. Is that correct?

A. When the cord is so united, the other parts of the

12 suspender end remaining unchanged, I understand that the same will be constructed in accordance with complainant's patent.

Cross-Q. 8. (Question repeated.) It admits an answer of "yes" or "no."

A. To answer "yes" or "no" would be incorrect. You can't unite a single end.

Cross-Q. 9. The examiner took my question incorrectly; properly corrected it should read as follows: "Then what you mean to say is that, as you understand it, it is only necessary that the cord should be united at a single point at the inner edges, to wit, a point just above the button-hole. Is that correct?"

A. I answer "yes," with the explanation that there are two points of the braid that are united together at a single place immediately above the button-hole, the braid being united at the upper ends to the attaching piece.

LEMUEL W. SERRELL.

13 United States Circuit Court, Southern District of New York.

ABRAHAM SHENFIELD
vs.
THE NASHAWANNUCK MANUFACTURING COMPANY *et al.* } In Equity.

Testimony on final hearing for complainant, taken before Geo. H. Evans, notary public, special examiner, by consent, pursuant to rule 67 (as amended) of the United States Supreme Court.

NEW YORK, *April* 16, 1886.

Testimony taken in accordance with the annexed notice.

Present: Edward N. Dickerson, Jr., for complainant.

DAVID J. BROWN, called and duly sworn as a witness on behalf of complainant, testified, in answer to questions by Mr. DICKERSON, JR., as follows:

Q. 1. What is your name, age, residence, and occupation?

14 A. David J. Brown; age, 40 years; residence, 421 West Seventy-first street, New York city; occupation, manufacturer at present.

Q. 2. Do you know Mr. Abraham Shenfield, of the National Suspender Company?

A. Yes, sir.

Q. 3. Are you about to leave New York; and, if so, how long do you expect to remain?

A. I am. Well, I shall be away six weeks to two months. I expect to leave on Sunday.

Q. 4. Are you familiar with the looped braided silk end manufactured by the National Suspender Company and which is the subject-matter of the present controversy?

A. Yes, sir.

Q. 5. Had you ever seen ends like that until they were exhibited to you by Mr. Shenfield?

A. I have not.

Q. 6. Were you at any time connected with any large dry-goods house in New York; if so, with what house?

A. Bates, Reed & Cooley. I was buyer for them during their whole existence.

Q. 7. Will you state what position they occupied in the trade?

A. One of the largest houses of New York, and on the suspender business I guess the largest; in fact, I know it was the largest of any house in New York.

Q. 8. Do you remember when Mr. Shenfield or the National Suspender Company began the introduction of these ends to the trade?

A. In the year 1875, the first I saw of them.

Q. 9. Will you state how they were received by the trade and what position these ends took in the suspender business?

A. They were received very well indeed; so much so that from the very start almost they took a leading position on my line of suspenders, and I think that inside of a year nearly half my suspender trade was on silk cord ends. I used to keep from 75 to 100 numbers of them—different numbers of the goods.

Q. 10. The trade to which you refer as "my trade" is, as I understand, the trade of Bates, Reed & Cooley, which you were managing?

A. Bates, Reed & Cooley; yes, sir.

DAVID J. BROWN.

Attest: GEO. H. EVANS.

WILLIAM W. TAYLOR, a witness called on behalf of the complainant and examined by Mr. BATE, being first duly sworn, says:

I am 49 years of age; I reside in New York city; I am engaged in the suspender business and have been for the past 19 years. I am the sole proprietor of my business, and it is carried on in the city of New York.

Q. 1. Are you familiar with the looped braid end manufactured by the National Suspender Company of this city?

A. Yes, sir.

Q. 2. Can you state when that looped braid end was first introduced to the trade by the National Suspender Company?

A. 1875 or 1876.

Q. 3. Whose invention did you understand that looped braid end to be?

(Objected to as not evidence.)

A. Mr. Shenfield's.

Q. 4. Do you mean Mr. Shenfield, of the National Suspender Company?

A. Yes, sir.

Q. 5. Have you handled suspenders provided with such looped braid ends?

A. Yes, sir.

Q. 6. Upon the introduction of such looped braid ends to the trade will you please to state how they were received by the trade?

(Objected to as immaterial, irrelevant, incompetent and calling for a conclusion and an opinion.)

16 A. Very favorably.

Q. 7. Were they or not preferred by the trade to the other kinds of suspender ends which were in the market?

(Same objection.)

A. To a very large extent.

Q. 8. Has there or not been a large demand in the trade for suspenders provided with such looped braid ends?

(Same objection.)

A. Very large.

Q. 9. Have you or not carried on an extensive business in suspenders?

A. Yes; very extensively.

Q. 10. Prior to the introduction of the looped braid end in controversy by the National Suspender Company were looped braid ends known to the trade?

(Same objection.)

A. Not to my knowledge.

Q. 11. Have you or not in your suspender business given a preference to suspenders provided with looped braid ends?

(Objected to on the same grounds, and no foundation laid.)

A. I have, very decidedly.

Q. 12. And why have you in your business given such a decided preference to suspenders provided with looped braided ends?

(Same objection.)

A. Because of their great durability.

Q. 13. In your dealings with customers has there or not been a large demand for such looped braid ends?

(Same objection.)

A. Very large indeed.

Q. 14. I call your attention to a looped braid end which I now hand you and ask you whether the same is similar to or
17 dissimilar from the looped braid end introduced by the National Suspender — in 1875 or 1876.

(Objected to as leading, and for incompetency.)

A. It looks to me precisely like it.

The said end is offered in evidence by complainant's counsel and is marked "Complainant's Exhibit Looped Braid End of 1875."

(Same objection to the exhibit.)

Cross-examined by Mr. JENNER:

Cross-Q. 15. Under what name or style do you carry on business?

A. W. W. Taylor.

Cross-Q. 16. What articles do you deal in besides suspenders?

A. Nothing else.

Cross-Q 17. Are you a customer of the National Suspender Company?

A. Yes, sir.

Cross-Q. 18. And have been for how many years last past?

A. About 12 or 15 years.

Cross-Q. 19. Do you purchase suspenders from other concerns?

A. Yes, sir.

Cross-Q. 20. What other kinds of suspenders, with reference to the ends, do you deal in other than those with braided ends?

(Objected to as immaterial.)

A. What is commonly called web ends and leather ends.

Cross-Q. 21. Which are the higher priced—the suspenders with the web ends, those with the leather ends, or those with the braid ends—so far as your dealings go?

(Same objection, and as not cross-examination.)

A. In regard to the web ends silk ends are much higher; leather ends about the same price. I refer to the rolled leather strap. The flat leather ends are much cheaper.

18 Cross-Q. 22. Of which do you sell the most—suspenders with the web ends, with the leather ends, or the braid ends?

A. Well, at the same price we sell more silk ends. I mean by silk ends braid ends.

(Answer objected to as not responsive.)

Cross-Q. 23. Irrespective of price, of what kind do you sell the most of?

A. Web ends.

Cross-Q. 24. In what colors do the rolled leather ends come which you sell?

(Same objection.)

A. White and different shades of brown.

Cross-Q. 25. And the web ends what colors?

A. All colors, pretty much.

Cross-Q. 26. And the braided ends?

A. Various colors.

Cross-Q. 27. Is there any difference in the variety of the colors presented by the web, leather, and braided ends?

A. Considerable difference. There are different colors.

Cross-Q. 28. And which class of suspenders presents the greater variety in color.

(Objected to as immaterial.)

A. There is a greater variety of web ends and braid ends than of leather.

Cross-Q. 29. The web ends of which you have been speaking are made of cotton, are they?

A. Of cotton and silk woven together.
Cross-Q. 30. When did you first see the braided end?
A. In 1875 or 1876.
Cross-Q. 31. Where?
A. In the National Suspender Company's warerooms.
Cross-Q. 32. In which of those years was it?
A. I am not positive whether it was 1875 or 1876.
Cross-Q. 33. Have you made any attempt to fix the date by reference to your books?
A. No, sir.
Cross-Q. 34. Do you manufacture suspenders?
19 A. No, sir.
Cross-Q. 35. How many dozen suspenders do you sell per annum, take the average of the last five years?
A. I couldn't tell you.
Cross-Q 36. State approximately.
A. From 25,000 to 30,000 doz. annually.
Cross-Q. 37. Did you ever hear of a Mr. Canavan, of Philadelphia?
A. No.
Cross-Q. 38. Will you look at Complainant's Exhibit Dick No. 4?" Did you ever see a suspender with an end resembling that exhibit?

(Objected to as incompetent and immaterial and as not cross-examination.)

A. Something similar.
Cross-Q. 39. When first?

(Same objection.)

A. About ten years ago, possibly.
Cross-Q. 40. Was it not longer ago than that?

(Same objection.)

A. I could not remember.
Cross-Q. 41. How did you come to see it?

(Same objection.)

A. I saw something similar to it on Fisk, Clark & Flagg's goods.
Cross-Q. 42. Did you buy or sell any?

(Same objection.)

A. I had some similar to it.
Cross-Q. 43. How did the ones which you saw and which you speak of as Fisk, Clark & Flagg's goods, compare with that exhibit? State the points of resemblance and dissimilarity.

(Same objection.)

The witness says: I shall have to recall what I said, having
20 just examined this "Exhibit Dick No. 4." I supposed it was a felt end, but I now see that it is a preparation on leather, and I never saw such an end before.

Redirect examination by Mr. BATE:

Redirect Q. 44. Do you purchase suspenders of the Nashawannuck Manufacturing Company of this city?

A. Yes, sir.

Redirect Q. 45. Quite largely?

A. Yes, sir.

Redirect Q. 46. Does the cost of suspenders depend at all upon the quality of the webbing, irrespective of the ends?

A. Certainly, largely.

Redirect Q. 47. And does the cost of suspenders depend at all upon the character of the buckles and of the trimming of suspenders?

A. Quite materially.

Redirect Q. 48. Are suspenders provided with silk or braid ends always higher than suspenders provided with web ends, or does the price depend upon the quality of the webbing and of the trimmings of the suspenders?

A. In the same quality of webbing silk ends are higher than web ends.

Redirect — 49. But suppose the quality of the webbing as used with the braid ends is poorer than that used with the web ends, how would it be in that case?

(Objected to.)

A. That is a difficult question to answer, there being so many different qualities of webbing.

Redirect Q. 50. Taking suspenders costing the same money, one having braid ends and another web ends, which kind is preferred in the trade?

(Objected as irrelevant, immaterial, incompetent, hypothetical.)

A. The braid ends.

Redirect Q. 51. Taking suspenders costing the same money, one having braid ends and the other leather ends, which kind is preferred in the trade?

(Same objection.)

21 A. Braided ends, decidedly.

Recross-examination:

Recross-Q. 52. Do you really mean your two last answers?

A. Most decidedly.

Recross-Q. 53. I suppose that the fact that the braided ends cost more and are handsomer than a web end or a leather may have something to do with the preference, may it not?

Question withdrawn.

WILLIAM W. TAYLOR.

ISAAC OPPENHEIMER, a witness called on behalf of the complainant, being duly sworn, deposes and says as follows:

I am 41 years old; I reside in the city of New York, and am a member of the firm of Neustadter Bros., doing business in this city and in California in gentlemen's furnishing goods, at wholesale; our business includes dealing in suspenders largely.

Q. 1. Are you familiar with the looped braid ends for suspenders introduced by the National Suspender Company of this city?

A. I am, sir.

Q. 2. When did you first become familiar with such looped braid ends?

A. When they were first introduced—about 1875 or 1876.

Q. 3. Will you please state, if you know, how such looped braid ends were received by the trade and what position they have occupied with respect to the other suspender ends in the market?

(Objected to as immaterial, irrelevant, incompetent.)

A. They were a success from the start, and have driven out, if not entirely, very much, the other makes of fine grades of suspenders in our market.

Q. 4. Then, upon being introduced to the trade, they were
22 bought in preference to other kinds of suspender ends, were they?

(Same objection, and as leading.)

A. They were given the preference at the same price.

If a man was offered a dozen suspenders at five dollars, with ordinary ends, even of better material, he would take a lower quality with braid ends in preference.

The braid ends, being more costly than any other end used on suspenders, made a suspender even of inferior web, buckle, &c., cost as much as another suspender of superior web, buckle, &c., with any other end.

Q. 5. Then, as I understand you, a purchaser would give the preference to a suspender having the braid end, notwithstanding the quality of the web and of the buckle might be inferior to the other suspender, costing five dollars per dozen?

(Same objection.)

A. Yes; he would.

Q. 6. The point determining the purchaser's preference would be the braid end?

(Same objection.)

A. Yes, sir.

Q. 7. Prior to the introduction of this looped braid end by the National Suspender Company had you ever seen or handled any braided ends?

A. No, sir.

Q. 8. Has the firm of which you are a member, Neustadter Bros., dealt in suspenders provided with looped braided ends since 1875?

A. Yes; they have.

Q. 9. Largely?

A. We are pretty large dealers in that line.

Q. 10. I call your attention to Complainant's Exhibit Looped Braid End of 1875 and ask you whether the same is similar to or dissimilar from the looped braid ends introduced by the National Suspender Company in 1875 or 1876 and to which you have referred?

(Objected to as leading and incompetent.)

23 A. The construction of the same; only the printing on the leather piece was different.

Q. 11. For about how many years has your firm of Neustadter Bros. dealt in suspenders?

A. About thirty years.

Cross-examined by Mr. JENNER:

Cross-Q. 12. Is this looped braid end of 1875 made of solid silk or is it cotton covered with silk; can you tell?

(Objected to as not cross-examination.)

A. According with the price, more or less covered with silk.

Cross-Q. 13. In your answer you referred to the braided ends in general, I suppose, didn't you?

A. Yes, sir.

Cross-Q. —. How is it with respect to this particular exhibit?

A. That seems to be all silk.

Cross-Q. 14. You have, then, seen some which were cotton covered with silk?

A. I have.

Cross-Q. 15. What do you suppose was the object of covering the cotton with the silk?

(Objected to as immaterial.)

A. To meet the public demand as to price.

Cross-Q. 16. You mean that the end should have the appearance of being a silk end, but was substantially cotton, so as to be cheap?

(Same objection.)

A. It was not substantially cotton, but it was cotton covered with silk to cheapen the cost.

Cross-Q. 17. Did you ever see any braided ends made of silk covered with cotton?

(Same objection.)

A. No, sir.

Cross-Q. 18. Why do they put the silk on the outside?

(Same objection.)

24 A. For the same reason that you put the lining of a coat inside and not outside.

Cross-Q. 19. Has your coat got a silk lining?

(Objected to as frivolous.)

A. It has.

Cross-Q. 20. Why don't you prefer a cotton lining to your coat?

(Same objection.)

A. Because silk lining is more comfortable to wearer.

Cross-Q. 21. Handsomer, too, isn't it?

(Same objection.)

A. Yes; but not on that account; simply because it is lighter; the lining does not show.

Cross-Q. 22. These braided ends are generally called in the trade silk ends, are they not?

A. In our house we call them silk ends.

Cross-Q. 23. Look at this "Complainant's Exhibit Dick No. 4." When did you first see a suspender end like that exhibited, if ever, before to-day?

(Objected to as immaterial and as not cross-examination.)

A. Before 1875, I believe.

Cross-Q. 24. Under what circumstances?

(Same objection.)

A. I saw them exhibited in suspender-manufacturing houses for sale.

Cross-Q. 25. Can you mention any house where you saw them?

(Same objection.)

A. If I would see the whole suspender I could, but on this end I can't. I believe, however, that Fisk, Clark & Flagg brought them out under some name which I forget now.

25 Cross-Q. 26. You said you first saw them before 1875? Give your best recollection as to the year when you first saw them.

(Same objection.)

A. I cannot give any explanation unless I look at my books.

Cross-Q. 27. Give me, according to your best recollection, the year that you first saw such an end as Exhibit Dick No. 4—that is, say it was between 1870 and 1878, if you choose, and get as near to it as you can.

(Same objection.)

A. I don't want to go on record at any time unless I consult my books.

Cross-Q. 28. But can you say whether it was between 1870 and 1878, according to your recollection?

(Same objections.)

A. It was before 1877. That is as near as I can testify now.

Cross-Q. 29. And after 1870?

A. That I cannot state now.

Cross-Q. 29½. I will call your attention, with the permission of opposite counsel, to the fact that Mr. Taylor, the witness who preceded you, said at first that this end, "Dick No. 4," was the same as the Fisk, Clark & Flagg end, but on more careful examination of the exhibit he said it was not. I mention the circumstance to you and ask you to give it a more careful examination and state whether you ever saw before to-day such a suspender end as that, "Exhibit Dick No. 4." At the suggestion of opposing counsel I will ask you to look particularly at the material of which it is formed.

(Same objections.)

A. I never examined those goods closely when they were offered for sale, and when I bought them I could not tell the difference between those brought out by one or the other manufacturer of suspenders at the time.

Cross-Q. 30. Do you deal in pocket handkerchiefs?

(Objected to as immaterial and not cross-examination.)

26 A. I do.

Cross-Q. 31. What kind?

A. All kinds—silk, cotton, and linen.

Cross-Q. 32. Which sells for the greater price?

(Objected to as immaterial.)

A. That depends on the fineness of linen or silk.

Cross-Q. 33. Which do you sell the most of at the same price—silk or linen?

(Same objection and as irrelevant.)

A. If a man wants a linen handkerchief he buys one; if he wants a silk handkerchief he buys a silk handkerchief.

Redirect by Mr. BATE:

Redirect Q. 34. So far as your firm is concerned, do they or not in their suspender business give a preference to suspenders provided with looped braid ends over suspenders provided with ends of other kinds?

(Objected to as immaterial and irrelevant, leading, and not in rebuttal.)

A. From a certain price upwards the braided end is given the preference at all times.

Oath and signature waived.

Adjourned to Saturday, April 24, 1886, at 12.

ISAAC KAUFFER, a witness called on behalf of the complainant, deposes and says as follows:

I am 57 years old, I reside in the city of New York, and I am con-

nected in business with a house of I. Oberndorfer & Co. The business of the house is that of gents' furnishing goods, including suspenders, at wholesale.

Q. 1. Are you familiar with the looped braid ends for suspenders introduced to the trade by the National Suspender Company of this city?

(Objected to as incompetent and immaterial.)

27 A. Yes, sir.

Q. 2. When did you first become familiar with such looped braid ends?

(Same objection.)

A. About 1875.

Q. 3. Will you please state how such looped braid ends were received by the trade and what position they have occupied with respect to other suspender ends in the market?

(Objected to as incompetent and calling for conclusive opinion.)

A. They were very favorably received by the trade, being looked upon as a novelty. They have displaced and been preferred to other kinds of suspender ends, particularly those of a better class.

Q. 4. As I understand you, the firm of I. Oberndorfer & Co. deal in suspenders. For how long a time have they dealt in suspenders?

A. Since 1877.

Q. 5. How long have you been connected with the house of I. Oberndorfer & Co.?

A. Since 1877, the starting of the house.

Q. 6. With what business house were you prior to 1877?

A. Alsberg & Jordan.

Q. 7. Did the firm of Alsberg & Jordan deal in suspenders?

A. Yes, sir; the same line of goods, including suspenders.

Q. 8. For about how long were you with Alsberg & Jordan?

A. About five years.

Q. 9. Has the firm of I. Oberndorfer & Co. dealt in suspenders provided with these looped braid ends?

A. Certainly.

Q. 10. To what extent?

A. To a large extent.

Q. 11. Did the firm of Alsberg & Jordan deal in suspenders provided with these looped braid ends?

(Objected to as immaterial.)

28 A. They did. I bought the goods for them, being the buyer for that house as well as for the house of I. Oberndorfer & Co.

Q. 12. Referring to the better class of suspenders, about what proportion of such suspenders as are sold by I. Oberndorfer & Co. are provided with looped braid ends?

A. The better class of goods, fully nine-tenths. I am acquainted as well with the sales of the suspenders.

Q. 13. Why is it that so large a proportion of the better class of suspenders are provided with these looped braid ends?

A. They are neat and very strong, stronger than any other end in use.

Q. 14. Referring to the dealings of I. Oberndorfer & Co. in suspenders of the better class, for which kind of suspender is there the greater demand, and what position do the customers of I. Oberndorfer & Co. assume with reference to these suspenders provided with looped braid ends?

A. I stated before in goods above three or four dollars a dozen the bulk—fully nine-tenths—of the suspenders sold by us are provided with the looped braid ends of the National Suspender Company. The customers think very favorably of those ends.

Q. 15. Do the customers or not call for such ends?

(Objected to as leading.)

A. A good many will not buy any others.

Q. 16. Prior to the introduction of these looped braid ends by the National Suspender Company had you ever seen or handled any looped braid ends for suspenders?

(Objected to as immaterial.)

A. No, sir; I had not.

Q. 17. Have these looped braid ends of the National Suspender Company had any reputation in the trade?

A. They have had a good reputation ever since they were introduced.

Q. 18. And have you been familiar with that reputation in the trade?

29 A. I have. I have had very good opportunity for knowing.

Q. 19. I call your attention to "Complainant's Exhibit Looped Braid End of 1875" and ask you whether the same is similar to or dissimilar from the looped braid end introduced by the National Suspender Company in 1875.

(Objected to as immaterial, irrelevant, and leading.)

A. It is similar, only there is a change in the button-hole; the braid crossed over at the top of the button-hole.

Q. 20. Did you ever see any of these braided ends in which the braid was not crossed, but was attached as shown in this exhibit?

A. Oh, certainly.

Q. 21. About how long ago?

A. Before 1877.

Q. 22. Was that an end of the National Suspender Company?

(Objected to as incompetent and leading.)

A. It was.

Cross-examination by Mr. JENNER:

Cross-Q. 23. Look at the suspender end now shown you, and which is marked "Exhibit Looped Braid End of Shenfield, No. 2," and say of which suspenders your firm has sold the most—suspenders with that kind of an end or suspenders with an end like "Complainant's Exhibit Looped Braid End of 1875." I call to your attention the circumstance that in the former exhibit the braid crosses the button-hole and in the latter the braid is stitched upon the inside edges without being crossed.

(The question is objected to, one of the ends referred to not being in evidence in the case.)

A. The Exhibit No. 2 has been made more years than the other one—looped braid end of 1875.

The exhibit shown the witness is offered in evidence and marked "Defendants' Exhibit Looped Braid End of Shenfield, No. 2."

30 Cross-Q. 24. Of which has your firm sold the greater number?

A. I will not be positive. The probability is this end, because we have been using it for more years.

Witness referred to "Exhibit Looped Braid End of Shenfield, No. 2."

Cross-Q. 25. When did you first begin to see the braid ends of Shenfield or the National Suspender Company in either form?

A. About 1875.

Cross-Q. 26. Look at "Complainant's Exhibit Dick No. 4" and state whether you ever saw before the present year a suspender end like that.

A. I do not recollect seeing any.

Cross-Q. 27. Assuming there to have been some stitching on the purple side of that end around the button-hole and up to the eyelets, would your answer be the same?

A. The same.

Cross-Q. 28. You have bought the braided-end suspenders from the National Suspender Company since their introduction?

A. I have.

Cross-Q. 29. Have you bought braided-end suspenders from any one else?

A. I have; from the Nashawannuck Manufacturing Company. My firm had, I mean; I believe some from Excelsior Company, and probably there would be some from the Thorndyke Manufacturing Company, Massachusetts, and we have bought from some others which I do not remember.

Redirect examination:

Redirect Q. 30. Do you know positively which of these two ends—Exhibit Looped Braid End of 1875 and Exhibit Looped Braid End of Shenfield, No. 2—was first introduced by the National Suspender Company?

A. I could not say positively which one, but I think they
31 were both used at one and the same time, but I am not positive about this.

The oath and signature of the witness are waived.

Examination adjourned to Tuesday, April 27th, at 12 o'clock noon.

PATRICK H. GOODWIN, being called as a witness in behalf of the complainant, testified as follows:

I am thirty-seven years of age; I reside in the city of Brooklyn, New York, and I am a buyer for the firm of Wm. H. Lyon & Co., of New York city; the business of the firm is notions, fancy goods, &c., including suspenders.

Q. 1. For how long have you been a buyer for the firm of Wm. H. Lyon & Co.?

A. Thirteen years.

Q. 2. For how long have you bought suspenders for that firm?

A. Thirteen years.

Q. 3. During the thirteen years that you have been a buyer for such firm has it done a large or small business in suspenders?

(Objected to for incompetency.)

A. At the present time it is a pretty large business; it has been increasing all the time.

Q. 4. Do you remember when the looped braid end was first introduced to the trade by the National Suspender Company of this city?

(Objected to for indefiniteness.)

A. I could not say positively; my first recollection is in 1875 or 1876; I won't say which of those two years.

Q. 5. For about how long has the firm of Wm. H. Lyon & Co. dealt in suspenders provided with looped braid ends and manufactured by the National Suspender Company?

(Same objection.)

A. Eight years.

32 Q. 6. I call your attention to "Complainant's Exhibit Looped Braid End of 1875" and ask you how the same compares with the looped braid end introduced to the trade by the National Suspender Company in 1875 or 1876.

(Objected to as leading.)

A. Why, it is the same end.

Q. 7. Please to state how this looped braid end of 1875 or 1876 was received by the trade generally.

(Objected to as immaterial and irrelevant, and for incompetency:)

A. I can't testify how it was received by the trade in those two years, because we did not handle them at that time.

Q. 8. During the eight years which Wm. H. Lyon & Co. have dealt in such suspender ends how have they stood in the trade?

(Same objection.)

A. I can't answer that question.

Q. 9. How was it that Wm. H. Lyon & Co. came to deal in such looped braid end suspender ends?

(Same objection.)

A. Our customers asked for the goods.

Q. 10. During the eight years which Wm. H. Lyon & Co. have dealt in such ends what has been the reputation of such ends in the trade; how has the trade received such ends?

(Same objection.)

A. Well, I think the trade has received them very favorably, because they ask for silk ends.

Q. 11. By silk ends do you mean braid ends?

A. Yes.

Cross-examination by Mr. JENNER:

Cross-Q. 12. Did the house of Wm. H. Lyon & Co. deal in suspenders prior to 1878?

33 A. Yes.

Cross-Q. 13. And from the time of your connection with them?

A. Yes.

Cross-Q. 14. Have you also bought for the firm of Wm. H. Lyon & Co. suspenders provided with ends like the exhibit now shown you?

A. Yes, sir.

"Defendants' Exhibit Looped Braid End of Shenfield, No. 2," shown the witness.

Cross-Q. 15. And of which variety has that firm bought and sold the most—suspenders with ends like the "Complainant's Exhibit Looped Braid End of 1875" or "Defendants' Exhibit Looped Braid End of Shenfield, No. 2?"

(Objected to as immaterial.)

A. I could not say which.

Cross-Q. 16. Have you any impression based upon your purchases?

(Objected to as immaterial and incompetent.)

A. Not any.

Cross-Q. 17. Have your purchases been about half and half of each variety?

(Same objections.)

A. I could not say.

Cross-Q. 18. How do you fix the time as 1875 or 1876 as that

when you first saw suspenders with ends like "Complainant's Exhibit Looped Braid End of 1875?"

A. The National Suspender Company made me a present of a pair of suspenders with my name woven in early in the spring of 1876, which was the centennial year.

Cross-Q. 19. When did you first see suspenders with ends like the "Exhibit Looped Braid End of Shenfield, No. 2?"

A. I can't give a date for that.

Oath and signature waived.

34 WILLIAM J. MAIDHOF, a witness called in behalf of complainant, testified as follows:

I am 34 years old. I reside in the city of New York, and am engaged in the dress-trimmings business in this city.

Q. 1. Were you ever connected with the American Suspender Company?

A. I was.

Q. 2. During what years?

A. From the fall of 1873 to 1879.

Q. 3. What was your position in connection with the American Suspender Company?

A. I was cashier and had general charge of the business, at 7 Mercer street, New York city.

Q. 4. What was the business of that company?

A. The manufacturing and selling of suspenders.

Q. 5. Please to state, if you know, when the looped braid end manufactured by the National Suspender Company was introduced to the trade.

A. To the best of my recollection, it was in the fall of 1875.

Q. 6. Did you see that end at the time or about the time of its introduction?

A. I did.

Q. 7. I call your attention to "Complainant's Exhibit Looped Braid End of 1875" and ask you how the same compares with the looped braid end introduced by the National Suspender Company about 1875.

(Objected to as leading.)

A. That is it.

Q. 8. Will you please state how this looped braid end of the National Suspender Co. was received by the trade?

(Objected to as immaterial, irrelevant, and not in rebuttal.)

A. Very favorably.

35 Q. 9. Did the introduction of this looped braid end of the National Suspender Company at all affect the sales of other ends? Please to state fully what knowledge you have upon this subject.

(Same objection, and also for incompetency.)

A. I can only say that when the suspender end came up the National Suspender Company before that was not recognized by us as competitors — all, but after that within a year they became decided competitors.

(Answer objected to as not responsive.)

Q. 10. You say that after this looped braid end was introduced the National Suspender Company became a decided competitor. How, if at all, did that competition affect the business of the American Suspender Company, with which you were connected?

(Objected to as immaterial and irrelevant, not in rebuttal, and for incompetency.)

A. By the loss of sales.

Q. 11. Did that competition materially or only slightly affect the American Suspender Company?

(Same objection and for indefiniteness and as leading.)

A. I think it affected them considerably.

Q. 12. At the time that you were connected with the American Suspender Company were you familiar with the reputation of this looped braid end of the National Suspender Company in the trade? If so, please to state how the trade looked upon it and what they thought of it.

(Same objection.)

A. I always heard that they thought favorably of it, not only as being a novelty, but as a good thing in the way of not soiling the shirt.

Q. 13. Please to state, if you know, what other advantages, if any, were possessed by this looped braid end.

(Same objection.)

A. Durability, and you could put it on much easier than you could leather; it was softer to the touch.

36 Q. 14. Had you ever prior to the introduction of this looped braid end by the National Suspender Company ever seen or handled looped braid ends for suspenders?

A. No, sir.

Q. 15. Will you please state who have been among the leading dealers in suspenders in this city?

(Same objection.)

A. All the jobbing houses, notably among them Messrs. H. B. Claflin & Co., Wm. H. Lyon & Co., I. Oberndorfer & Co., and W. W. Taylor; in fact, all the dry-goods jobbers—every one of them that had a notion department—kept suspenders, and we sold them. Those named are the leading ones.

Cross-examination by Mr. JENNER:

Cross-Q. 16. Please look at "Exhibit Shenfield No. 2" and state when you first saw ends like that.

A. That was afterwards, about 1877, I think.

Cross-Q. 17. Have you seen that end to-day before coming into this room?

A. I did.

Cross-Q. 18. And also the end which was first shown you—the end of 1875?

A. Yes, sir.

Cross-Q. 19. You saw them both?

A. I did, and I beg to say that I recognized them both.

(All after "I did" objected to as not responsive.)

Cross-Q. 20. Who showed them to you?

A. Mr. Bate.

Cross-Q. 21. That was right. Was anything said as to when they were put upon the market?

A. I was asked if I recognized that end.

(Answer objected to as not responsive.)

Cross-Q. 21½. Question repeated.

A. I was asked if I remembered when that end was put upon the market, and I answered that I thought it was the fall of 1875.

37 Cross-Q. 22. That was with respect to the Shenfield end of 1875?

A. Yes, sir.

Cross-Q. 23. How about the other?

A. I was shown that, the end No. 2, and asked when I first saw it, and I answered I thought about 2 years later. I have worn them both.

Cross-Q. 24. In whose possession did you first see and under what circumstances did you see the Shenfield end of 1875? State all the circumstances, such as time, place, persons, and every other circumstance which you remember attending the first sight of it by you.

(Objected to as immaterial.)

A. In answer to that question—the first I could not answer. If my memory serves me right, I think I bought the first suspenders like that from the National Suspender Company. This was about 1875 or 1876.

Cross-Q. 25. What did you pay for them?

A. Either seventy-five cents or a dollar.

Cross-Q. 26. What was the color of the ends?

A. I rather think it was red.

Cross-Q. 27. But you are not sure of it?

A. I am not sure. I have had them in white and in blue.

Cross-Q. 28. What was the color of the webbing?

A. That was to match it.

Cross-Q. 29. Are you sure of that or is it a guess?

(Objected to as immaterial.)

A. I am sure.

Cross-Q. 30. In the first ends that you saw were there straps attached to a leather-attaching piece, as in the exhibit?

A. Yes, sir.

Cross-Q. 31. State all the circumstances which you remember respecting your first sight of ends like the "Shenfield No. 2."

A. Well, the first time that I saw that must have been the time when I got the suspenders with that end on—I think 1877.

38 Cross-Q. 32. Are you speaking from recollection?

A. I am.

Cross-Q. 33. And you recollect the purchase of such a pair of suspenders about 1877?

A. I do.

Cross-Q. 34. And you recollect that before that you had never seen such ends like "Shenfield No. 2?"

A. I don't recollect seeing any before.

Cross-Q. 35. Do you recollect not having seen them before?

A. I don't recollect having seen them before.

Cross-Q. 36. Do you now recollect that when you bought a pair with such ends they were new to you?

(Objected to as immaterial.)

A. Most assuredly.

Cross-Q. 37. And you sold a number?

A. I did.

Cross-Q. 38. Do you remember what they cost?

A. 75 cents or a dollar; possibly only 50 cents.

Cross-Q. 39. Then you don't remember what they cost?

(Objected to as already answered.)

A. No more than what I have just said.

Cross-Q. 40. Of course, you know about what they cost within certain limits. Do you remember what they cost?

A. From seventy-five cents to a dollar; possibly only fifty cents.

Cross-Q. 41. Do you remember the color of the ends?

A. I know they were either red or blue, for the reason that I habitually wear suspenders of one of those two colors, and the only suspenders that I have worn for the last ten years are suspenders known as Berlin wool suspenders, which the American Suspender Company manufacture, and the suspender with a silk or braid end.

Cross-Q. 42. What kind of suspenders did the American Suspender Company make in 1875 with respect to the ends?

A. Leather ends and web ends.

39 Cross-Q. 43. What became of the American Suspender Company?

(Objected to as immaterial and irrelevant.)

A. They went into the hands of a receiver in 1879.

Cross-Q. 44. Was it a corporation or a firm?

(Same objection.)

A. Corporation.

Cross-Q. 45. Were you a salesman?
A. No.

Redirect by Mr. BATE:

Redirect Q. 46. Have you ever worn suspenders with the web or ends of any other color than red or blue?
A. I have; of white.
Redirect 47. While you were with the American Suspender Company were you familiar with the suspender trade?

(Objected to as leading, for incompetency, and not in rebuttal.)

A. I should certainly say I was.

Oath and signature of witness waived.
Further taking of testimony adjourned until Wednesday, April 28th, at 2 p. m.

40 Met pursuant to adjournment April 28th, 1886, at 2 o'clock.
Present: Mr. Bate, for the complainant, and Mr. Jenner, for the defendants.

GEORGE W. BRAMHALL, called as a witness in behalf of complainant, testified as follows:

I am 33 years of age; I reside in the city of Brooklyn, State of New York, and I am a buyer of suspenders, &c., for the men's furnishing goods house of Robert K. Davies & Co., of this city, who are extensive dealers in suspenders, &c.
Q. 1. For how long have you been a buyer of suspenders for Robert K. Davies & Co.?
A. For the last fifteen years.
Q. 2. And during such fifteen years have you or not been familiar with the suspender trade?
A. I have.
Q. 3. Please to state, if you know, when the looped braid for suspender end manufactured by the National Suspender Company was first introduced to the trade.

(Objected to for indefiniteness.)

A. I should say about 1875.
Q. 4. I call your attention to "Complainant's Exhibit Looped Braid End of 1875" and ask you how the same compares with the looped braid end introduced by the National Suspender Company about 1875.

(Objected to as leading.)

A. As near as I can get it, the same thing.
Q. 5. Will you please state, from your knowledge of the suspender trade, how this looped braid end of the National Suspender Company was received by the trade?

(Objected to for incompetency.)

A. It was regarded as a novelty and received favorably.

Q. 6. Did it or not acquire a reputation in the trade, and to what extent generally was it used?

(Same objection and as leading.)

41 A. It did acquire a reputation as being a good and practical end; it has acquired a great reputation; met with large sales.

Q. 7. Please to state, from your knowledge of the trade, how the sales of suspenders provided with these looped braid ends affected, if at all, the sales of suspenders provided with ends of other kinds.

(Same objection.)

A. It displaced many others of the better grade of suspenders.

Q. 8. Has the house of Robert K. Davis & Co. dealt in suspenders provided with these loop braid ends.

A. It has.

Q. 9. To any considerable extent?

A. It has.

Q. 10. Will you please to state, from your experience in the suspender trade and in connection with these looped braid ends, some of the advantages, if any, of such ends?

A. It has added to the durability and beauty of the suspenders to which it has been applied.

Q. 11. Please to state, if you know, from your knowledge of the trade, the position occupied in the trade by the National Suspender Company, after the introduction of these looped braid ends by them, as compared with their position in the trade prior to the introduction of such looped braid ends.

(Objected to as immaterial and irrelevant.)

A. Well, it made them formidable rivals—active competitors of other companies.

Q. 12. Do you mean that their position in the trade after the introduction of the looped braid ends by them was stronger than it was before?

(Same objection, and as leading and incompetent.)

A. Yes; it was.

42 Cross-examination by Mr. JENNER:

Cross-Q. 13. What has been your annual average purchase of suspenders during the last five years?

(Objected to as immaterial and irrelevant. The witness refuses to answer the question, stating that the inquiry asked relates to matters of a confidential nature, which he does not feel at liberty to disclose.)

Cross-Q. 14. You know about what your annual purchases have been for the last five years?

(Objected to as immaterial, irrelevant, and not proper cross-examination.)

A. I do.

(Motion noted to strike out the deposition of the witness because of his refusal to answer the preceding question.)

Cross-Q. 15. Have you bought any suspenders the present season?

A. I have.

Cross-Q. 16. What percentage of the suspenders purchased by you the present season have been provided with braided ends like the exhibit shown you, "Looped Braid End of 1875?"

A. I decline to answer that question. The question is of the same nature as the prior question I declined to answer.

Cross-Q. 17. State what proportion of the suspenders bought by you during the past five years have been provided with braided ends like the Exhibit "Looped Braid End of 1875." If you can't state it exactly state it approximately, as nearly as you can, and if you can't state the percentage for five years state it for each year of the five or such year or years as you are able to do.

(This question and the preceding one are objected to as immaterial and irrelevant, and as not proper cross-examination as to the matters testified to in the direct examination of this witness.)

A. I decline to answer.

43 Cross-Q. 18. Are you able to answer the last question?

(Same objection.)

A. I could arrive at it by going over my books.

Cross-Q. 19. Are you not able to answer the question approximately without referring to your books?

(Same objection.)

A. Yes, I could.

Cross-Q. 20. Will you, then, answer the question, giving the approximate percentages inquired about or any of them?

(Same objection.)

A. I will not.

Motion to strike out the deposition renewed; the remainder of the cross-examination *de bene*.

Cross-Q. 21. When did you first see a suspender end like the one now shown you?

A. I should say that this particular end followed the introduction of the one previously shown about three years.

Witness referred to "Defendants' Exhibit Looped Braid End of Shenfield, No. 2."

Cross-Q. 22. Of which kind have you purchased during the past five years the greater number, suspenders with ends like the "Exhibit Looped Braid End of 1875" or suspenders with ends like the "Exhibit Looped Braid End of Shenfield, No. 2?"

(Objected to as immaterial and irrelevant.)

A. I have purchased more with ends like the Exhibit No. 2.

Cross-Q. 23. State the proportion.

(Same objection.)

A. To the best of my recollection, I have not bought any suspenders with ends like the "Looped Braid End of 1875" in years. My purchases have been of suspenders with ends like the "Looped Braid End of Shenfield, No. 2."

44 Cross-Q. 24. When did you stop buying suspenders with ends like the "Exhibit Looped End of 1875?"

(Same objection.)

A. Shortly after the introduction of "Exhibit No 2;" within a year or two.

Cross-Q. 25. Please look at "Complainant's Exhibit Dick No. 4" and say whether or not you ever saw a suspender end like that.

(Same objection.)

A. I have seen ends of the same general character, but not being able to take this apart and not knowing exactly the materials of which it is composed, I cannot say whether I have ever seen an end just like this.

Cross-Q. 26. I presume you have in mind a suspender end introduced by Fisk, Clark & Flagg, have you not?

(Objected to as unwarrantable assumption and as immaterial.)

A. I have.

Cross-Q. 27. The end shown you, "Complainant's Exhibit Dick No. 4," was not made by Fisk, Clark & Flagg, as will be admitted. After such information, can you now say whether you ever saw before an end like the Exhibit Dick No. 4?

(Objected to as immaterial.)

A. I have seen ends of the same general character.

Cross-Q. 28. When and where first?

(Objected to as immaterial and irrelevant.)

A. In 1869, in the city of New York; Fisk, Clark & Flagg used to make the old Russian end, and that suggested the others, which were made to correspond with it in appearance.

Cross-Q. 29. What kind of ends did the suspenders have which you dealt in in 1873?

(Objected to as immaterial.)

A. Why, all sorts and kinds of ends.

45 Cross-Q. 30. Did you deal in suspenders provided with ends like the one now shown you?

(Same objection.)

A. That web end with the button-hole in it has been in use longer than I can remember.

The witness has reference to the web portions of the ends shown him.

The end last referred to is offered in evidence by the defendants' counsel and is marked Defendants' Exhibit "A," April, 1886.

(Exhibit objected to as immaterial and irrelevant.)

Cross-Q. 31. Have you purchased braided ends or suspenders with braided ends of the Nashawannuck Manufacturing Company?

A. I have.

Cross-Q. 32. In those ends how was the button-hole formed?

(Same objections.)

A. I have bought three or four different kinds of braided ends from the Nashawannuck Company, as it now strikes me. Some of the ends were known as Betts ends. As near as I can judge, it was crocheted. The end now shown me is what I call a Betts end.

The end referred to by the witness is marked in evidence "Defendants' Exhibit Betts End."

Besides this, one of the ends was formed of braid clamped above the button-hole, and no stitching above the clamp; another end was fastened above the button-hole at intervals by means of pieces of wire; that is all I call to mind now.

(The "Defendants' Exhibit Betts End" is objected to as immaterial and irrelevant.)

46 Cross-Q. 33. When did you first purchase the Betts end?

(Same objections.)

A. To the best of my recollection, about four or five years ago.

Cross-Q. 34. And the ends where the loop was formed by one or more metal clamps or wire?

(Same objection.)

A. Two or three years ago.

Redirect examination by Mr. BATE:

Redirect Q. 35. Do you remember of what material the Russian end, so called, of Fisk, Clark & Flagg was made?

A. The two principal materials or most important, I should say, and the ones giving character to the suspender or end were red felt and chamois; the other ends suggested by the Russian ends were made of other materials, being made similar in appearance so far as possible; they were an imitation of the Russian end.

Redirect Q. 36. Several questions have been put to you, Mr. Bramhall, which you have refused to answer. Will you please state your reasons for so refusing?

A. I think I have given my reasons; that reason applies to them all.

Redirect Q. 37. Your reason, as I understand you, is that the ques-

tions asked relate to matters which you deem to be of a confidential nature?

A. Yes, sir.

Redirect Q. 38. As I understand, the house of Rob't K. Davies & Co. has dealt in suspenders provided with different kinds of ends?

A. Yes, sir.

Redirect Q. 39. And for about how many years has your house dealt in suspenders provided with looped braid ends?

A. About eleven years.

Redirect Q. 40. And have you or not during these eleven years dealt continuously in suspenders provided with such looped braid ends?

A. We have.

47 Redirect Q. 41. I do not seek to inquire into the private business affairs of Robert K. Davies & Co., but I should like to know, if you are willing to state, simply the average annual number of suspenders purchased by your house during the past five years. I simply ask you to state approximately, and have no reference to prices.

A. I should think about 20,000 dozen suspenders annually during the last five years.

Redirect Q. 42. As I understand you, Robert K. Davies & Co. have not bought any suspenders provided with looped braid ends, identically like that shown in Complainant's Exhibit Looped Braid End of 1875, for five years. Is that true, sir?

A. Yes.

Redirect Q. 43. Prior to the introduction of the looped braid end by the National Suspender Company had you ever seen or dealt in suspenders provided with looped braid ends?

A. No.

Redirect Q. 44. You have said that Robert K. Davies & Co. purchase annually about 20,000 dozen of suspenders. Will you kindly state what proportion of such amount are provided with looped braid ends, approximately.

A. About fifteen per cent.

Redirect Q. 45. And in the better grade of suspenders about what proportion?

A. About fifty per cent. of the better class of suspenders.

Recross by Mr. JENNER:

Recross-Q. 46. Do you mean by looped braid end such an end as the "Betts' end;" also such an end as the "Exhibit Looped Braid End of Schneifled, No. 2?"

A. I refer only to the "Shenfield No. 2" for the past five years.

Recross-Q. 47. And you have used the phrase "looped braid end" in that sense all through your deposition?

(Objected to as misleading, the witness having identified "complainant's looped braid end of 1875.")

48 A. In my testimony I have referred only to Shenfield No. 2.

Recross-Q. 48. At the time you were buying suspenders provided with braided ends like the "Exhibit Looped Braid End of 1875" what proportion did the suspenders provided with such ends bear to the whole number of suspenders which you bought?

A. At that time it was comparatively a new thing, just being introduced; consequently the demand was not as great as in later years, and the percentage probably never was five per cent. of the total quantity used.

Counsel for complainant requests the witness to repeat on the record the statement which he made to counsel for defendants with respect to the reason for the small percentage at the time referred to.

(Defendants' counsel objects to the ceaseless interruptions of Mr. Bate.)

Counsel for complainant requests the examiner to read to the witness what he has just said on the record.

Recross-Q. 49. Will you now again look at "Complainant's Exhibit Dick No. 4" and state whether you ever saw a suspender end like that, and I call your attention particularly to the kind of finish on the purple surface.

(Objected to as already fully answered.)

A. I could not say whether I have or not; have seen ends of the same general appearance, but as it was many years ago I am unable to state now whether they were precisely the same or not.

Re-redirect by Mr. BATE:

Re-redirect Q. 50. At the time you answered recross-question 48 you made a statement to the counsel for defendant as to the reason for the small percentage of looped braid ends at the time referred to. Will you not kindly repeat that statement? (The question referred to and the answer thereto are read to the witness.)

49 (The question objected to, as the matter now inquired for was not responsive to any question put. If the matter is now inquired for originally it is objected to as immaterial.)

A. Our business in suspenders at that time being almost entirely in imported goods, many of which we had the exclusive sale of in this country, our business was necessarily very much larger in the number of dozens than in later years, so that any comparison based on a percentage would be unfair.

Re-redirect Q. 51. You have referred to "Defendants' Exhibit Looped Braid End of Shenfield, No. 2," as a looped braid end. What do you call "Complainant's Exhibit Looped Braid End of 1875?"

(Objected to, as it is immaterial what the witness now calls the exhibit referred to. The only important inquiry is whether in his answers heretofore given he has intended to refer to the looped braid end of 1875 or the Shenfield No. 2.)

A. Well, I have been designating it as Exhibit No. 1.

Re-redirect Q. 52. Do you or not call that a looped braid end?

(Same objection, and as leading.)

A. I do.

Re-redirect Q. 53. In what respect in your testimony have you only referred to "Shenfield No. 2" as a looped braid end?

A. That portion covering our business for the past five years.

Re-redirect Q. 54. Prior to the last five years what looped braid ends of the National Suspender Company have you intended to refer to in your testimony?

A. The ends known as Exhibit No. 1 up to the introduction of the Exhibit No. 2.

The witness referred to "Complainant's Exhibit Looped Braid End of 1875" as No. 1 and "Defendants' Looped Braid End of Shenfield, No. 2," as No. 2.

Oath and signature of witness waived by consent.

50 ELIAS MARCUS, a witness called for complainant, testified as follows:

I am 49 years of age; I reside in the city of New York, and I am engaged in the gents' furnishing goods business, including suspenders.

Q. 1. For about how long have you been in the suspender business?

A. Since 1855.

Q. 2. Do you remember when the looped braid end manufactured by the National Suspender Company was introduced to the trade? If so, please state when.

A. About 1875.

Q. 3. I call your attention to "Complainant's Exhibit Looped Braid End of 1875" and ask you how the same compares with the looped braid end introduced by the National Suspender Company about 1875, as you have stated.

A. That is the very end they introduced at that time.

Q. 4. During the years which you have been connected with the suspender trade have you or not been familiar, generally, with such trade?

(Objected to for incompetency.)

A. Yes, sir.

Q. 5. Please to state from your experience in and knowledge of such trade how this looped braid end of the National Suspender Company was received or looked upon by the trade.

(Objected—immaterial, irelevant, incompetent, and not in rebuttal.)

A. As a novelty and a very good wearing and lasting end.

Q. 6. Please to state, if you know, with what kind of sale this looped braid met with.

(Same objection.)

A. Good.

Q. 7. Has the sale of this looped braid end in any way
51 affected the sale of suspenders provided with ends of other kinds?

(Same objection.)

A. Very much; better than any other end produced.

Q. 8. Have you, prior to the introduction of this looped braid end by the National Suspender Company, ever seen or handled any looped braid ends?

A. No, sir.

Cross-examination by Mr. JENNER:

Cross-Q. 9. Do you know when this suit was commenced?

(Objected to as immaterial and not cross-examination.)

A. I don't know.

Cross-Q. 10. Has anybody during the last year or year and a half paid you any money in connection with this litigation about suspenders or made you any promises of money?

A. I don't understand the question.

Cross-Q. 11. What is there in the question that you don't understand?

A. I don't know the meaning of the question.

Cross-Q. 12. What is there in the question that you don't know the meaning of?

A. That my witness cannot — bought for money.

Cross-Q. 13. Has Mr. Shenfield or Mr. Bernheimer paid you any money within the last year or year and a half in connection with this litigation about suspenders?

A. No, sir.

Cross-Q. 14. I shall ask Mr. Shenfield and Mr. Bernheimer that same question. I now again ask you whether Mr. Shenfield or Mr. Bernheimer has paid you any money within the past year or year and a half in connection with this litigation?

A. I think it is impertinent in the lawyer to ask me such a
52 question. I have been over twenty-seven years in the market, and I can bear the best recommendation of any man traveling in two shoes.

Question repeated.

A. No, sir. As I said before, it is impertinent of the other side to ask me such a question.

Cross-Q. 15. Has the National Suspender Co. paid you any money in connection with this litigation?

A. No. I said no, and I will swear to it fifty times.

Cross-Q. 16. Have you been examined as a witness before in any of these suspender litigations?

A. I believe once or twice.

Cross-Q. 17. Did you testify as to purchasing goods which were claimed to be an infringement?

A. I can't tell.

Cross-Q. 18. Do you mean you don't remember?

A. I believe I never was examined on that point.

Cross-Q. 19. Have you purchased suspenders with braided ends from the National Suspender Co.?

A. Yes, sir.

Cross-Q. 20. How many?

A. Thousands of dollars' worth.

Cross-Q. 21. How many dozen?

A. I can't exactly tell from my recollection, but a good many hundred dozen..

Cross-Q. 22. How many, as nearly as you remember?

A. Since the eight years it might be three or four thousand dozen.

Cross-Q. 23. And before that how many?

A. A good many.

Cross-Q. 24. How many?

A. Thousands of dozens.

Cross-Q. 25. How many thousands, as nearly as you remember?

A. I have no recollection.

Cross-Q. 26. Those that you bought did you sell again?

A. Partly I did and partly the other salesmen.

Cross-Q. 27. Did you buy them for yourself or for some one else?

A. For other houses I have been buyer for.

Cross-Q. 28. Name the houses you have been buyer for since 1875 and how long you were with each as buyer, and during what time it was.

53

A. M. A. Tynberg, M. Simon & Brother, and then the firm changed to Simon Bros. & Steiglitz; with Steinberg I believe I was four years and a half; I can't tell exactly. I was six or seven years, I guess, with Simon Bros. & Steiglitz. I believe it was at the end of 1878 that I left them.

Cross-Q. 29. Since then what have you been doing?

A. Engaged in the gents' furnishing business.

Cross-Q. 30. Have you had a store or peddled?

A. I have got a place in Lispenard street and go out and solicit my trade.

Cross-Q. 31. What rent do you pay in Lispenard street?

A. Forty dollars a month.

Cross-Q. 32. Describe the braided ends attached to the suspenders which you have bought from the National Suspender Co. during the last eight years, and give the fullest description of it which you are able to give.

A. A plain and a crossed one.

Cross-Q. 33. You mean, I suppose, like the two Exhibits "Looped Braid End of 1875" and "Looped Braid End of Shenfield, No. 2?"

A. Yes, sir.

Cross-Q. 34. How many of each kind have you bought during the last eight years?

A. As I said before, I could not tell that from my head. I got as many of one kind as of the other.

Cross-Q. 35. Since you left Simon & Steiglitz you have bought suspenders with braided ends from the National Suspender Co., have you?

A. I have.

Cross-Q. 36. During the last year how many of each kind have you bought?

A. I can't tell from my head, but it could easily be shown by the National Suspender Company's books.

Cross-Q. 37. What is your best recollection about it?

A. I have no idea.

Cross-Q. 38. Have you not any impression at all?

A. No.

Cross-Q. 39. Ten thousand dozen of each kind?

54 A. No.

Cross-Q. 40. A hundred dozen of each kind?

A. I am not here to be made a laughing-stock of. I have no idea, as I said before.

Cross-Q. 41. Did you buy them yourself?

A. Yes, sir.

Cross-Q. 42. Have you sold them?

A. Yes, sir.

Cross-Q. 43. And you mean to say that you have no impression as to how many of each kind of the braided ends you have bought during the last year; do you state that?

A. Of each kind I buy them just as I want them—5, 6, and 10, and 3 and 4, and sometimes ½ dozen of each kind; on the way coming here I bought three dozen.

Cross-Q. 44. Did you ever buy any suspenders from the Nashawannuck Suspender Co.?

A. I did, sir.

Cross-Q. 45. When last?

A. I believe two years ago was the last I bought.

Cross-Q. 46. What did you buy?

A. The same as I do of anybody else—small and larger.

Cross-Q. 47. What was the last purchase that you made?

A. I don't remember.

Cross-Q. 48. Was it not silk-end suspenders?

A. No; they were holiday goods.

ELIAS MARCUS.

Attest: GEO. H. EVANS.

NEW YORK, *April* 29, 1886.

Met pursuant to adjournment.

Present: Mr. Dickerson, Jr., for complainant; Mr. Jenner, for defendants.

LOUIS FRANKE, called as a witness in behalf of complainant, testified as follows:

55 I am 53 years of age; I reside in the city of New York, and am engaged in business as an importer of raw silk and manufacturer of thrown silk; my business has included the manufacture of silk braid.

Q. 1. Have you had any business dealings with the National Suspender Company of this city?

A. Yes, sir.

Q. 2. Have you sold the said company any silk braid?

A. Yes, sir.

Q. 3. Have you recently had prepared a statement from your books showing the quantity of silk braid sold by you to the National Suspender Company since about the first of 1875? If you have, please to produce such statement.

(Objected to as immaterial and irrelevant.)

A. I have.

The witness produces a statement, and the said statement is offered in evidence by the complainant's counsel and is marked "Complainant's Exhibit Franke Braid Statement."

(Statement objected to as immaterial and irrelevant and secondary.)

56 Cross-examination by Mr. JENNER:

Cross-Q. 10. Is the National Suspender Company your most important customer?

A. The National Suspender Company is the most important customer for these braids.

Cross-Q. 11. Question repeated.

A. The National Suspender Company is the most important customer for such suspender braid.

57 Counsel for complainant instructs the witness he need answer no questions whatever relating to any other part of his business than the manufacture of braid.

(Such instructions objected to and notice of motion given to strike out the deposition.)

Cross-Q. 11½. Is the National Suspender Company your most important customer?

A. This question relates to—not to braid; therefore I don't wish to answer.

Cross-Q. 12. You are not to judge of that. Will you state whether the National Suspender Company is your most important customer?

(Counsel for complainant instructs the witness not to answer this question except as to braid.)

A. On instruction of counsel I refuse to answer.

(The instruction given to the witness by complainant's counsel is objected to and the attention of the court called to the intention of complainant's counsel to prevent an inquiry which shall show the bias of this witness; a motion is noted to strike out the deposition.)

Cross-Q. 13. In what year and month did you first sell any braid to the National Suspender Company?

A. The month of May, 1875.

Cross-Q. 14. Before that did you ever see any flat braid, either of silk or cotton or mixed?

(Objected to as not cross-examination. Counsel for defendants is notified that in this question he is making the witness his own.)

A. Certainly. I have seen a good many braids; flat braids of various kinds of material.

Cross-Q. 15. How long have you been a manufacturer of braid?

A. In the neighborhood of twenty-three to twenty-five years.

Cross-Q. 16. Whereabouts during all that time?

A. In New York city.

58 Cross-Q. 17. What business did you carry on before that?

A. I have been buying goods at auction and sent them to New Orleans.

Cross-Q. 18. What kind of goods?

A. Dry goods.

Cross-Q. 19. What other business were you engaged in before going into the braid business?

A. If you wish to know them all I can tell you a dozen different kinds of business.

Cross-Q. 20. Tell them.

A. Well, I will start from the beginning. I apprenticed in Leipsic for five years in a dry-goods store; from there I went to Berlin and manufactured cloaks and mantillas for two houses in Berlin, one after the other; by doing so I came in contact with ladies' dress and cloak trimmings, amongst which was various kinds of braid. I also was manufacturer in Berlin of cloaks and mantillas on my own account; gave it up in 1868; came over here and carried on the business of importing silk goods in the city of Cincinnati, Ohio; from there I went to New Orleans; became acquainted with some dry-goods house, with which I became engaged to buy goods in New York at auction and send them to New Orleans, but at the time the war broke out I had to discontinue that business—I mean the business to deal with the Southern States. To do something here in New York I kept a billiard saloon at two places in the city of New York, one after the other. Soon after I began manufacturing dress and cloak trimmings, which I have continued up to about ten years ago, and sold that business out and kept the other business, importing raw silk and manufacturing thrown silk, with the addition of manufacturing suspender braid, which I am continuing on up to

this date in the city of Paterson, New Jersey, and have the salesroom of the goods in the city of New York, 110 Grand street. I am occupying in my factory about three hundred hands, and my sales amount to a million and a quarter to a million and a half a year.

(Answer objected to as not responsive.)

59 Cross-Q. 21. From what time to what time were you in the saloon business and at what places, streets, and numbers?

A. I do not remember exactly the year and date, but the places were corner Eighth avenue and Twentieth street and the other in the block between Thirty-fourth and Thirty-fifth street, Eighth avenue.

Cross-Q. 22. Were they liquor saloons?

A. Along with billiard saloon; yes.

Cross-Q. 23. How long did you carry on that business?

A. Between two and three years, I guess; I am not quite certain.

Cross-Q. 24. When did you give that business up, as near as you remember?

A. I think it was in 1862.

Cross-Q. 25. And from that did you go into the manufacture of braid?

A. From that I went into the manufacture of dress and cloak trimmings, and braid was included; and I wish to state further that I think I was the first manufacturer in this country to make tubular cord and tubular braid.

(All after the word "included" objected to as not responsive.)

Cross-Q. 26. What kind of dress trimmings did you make at the start?

A. I guess it was silk fringes, worsted fringes, tassels, cords, and braids.

Cross-Q. 27. What kind of braids to start?

A. Those were braids used for dress trimmings.

Cross-Q. 28. What kind were they?

A. Those were made on the wheel and plaited.

LOUIS FRANKE.

Attest: GEO. H. EVANS.

60 JOHN G. BORGSTEDE, a witness called in behalf of complainant, testified as follows:

I am 18 years old; I reside in the city of New York, and I am book-keeper for Mr. Louis Franke, in this city.

Q. 1. I call your attention to "Complainant's Exhibit Franke Braid Statement," and ask you what, if anything, you know concerning the same?

A. I copied this from the books of the firm of Louis Franke.

Cross-examination waived.

JOHN G. BORGSTEDE.

Attest: GEO. H. EVANS.

61 *Monthly Statement.*

NEW YORK, ——, 188–.

The National Suspender Company to Louis Franke, 110 Grand street, between Broadway and Mercer street.

Terms —.

1875.					
May.	109 yards	15c.			$11 36
June.	110 "	16c.	$12 23		
"	1,386 "	15c.	144 41		
				156 64	
July.	2,754 "	15c.			286 95
Aug.	3,765 "	15c.			392 31
Sept.	8,680 "	15c.			904 19
Oct.	5,470 "	15c.	569 45		
"	633 "	16c.	70 32		
				639 77	
Nov.	11,711 "	15c.			1,219 91
Dec.	6,108 "	15c.			640 31
1876.					
Jan.	12,858 yards	15c.			1,317 56
Feb.	9,911 "	15c.			1,032 43
M'ch.	12,733 "	15c.			1,243 02
Ap'l.	16,706 "	15c.			1,740 22
May.	13,353 "	15c.			1,390 94
June.	1,726 "	12c.	143 83		
"	10,192 "	15c.	1,062 49		
				1,206 32	
July.	18,211 "	15c.			1,896 99
Aug.	22,220 "	15c.			2,314 60
Sept.	25,230 "	15c.			2,628 12
Oct.	22,042 "	15c.			2,296 04
Nov.	3,641 "	15c.			379 29
Dec.	2,066 "	15c.			215 19
1877.					
Jan.	144 yards	9c.	9 00		
"	12,952 "	15c.	1,349 17		
				1,358 17	
Feb.	14,823 "	15c.			1,544 05
M'ch.	7,608 "	15c.	792 51		
"	12,955 "	10c.	1,295 50		
				2,088 01	

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Ap'l.	11,794 yards	10c.			$1,179 40
July.	2,777 "	10c.			277 70
Aug.	5,233 "	10c.			523 30
Sept.	234 "	.08c.	18 72		
"	10,458 "	10c.	1,045 80		
				1,064 52	

1877.					
Oct.	1,108	"	10c.	110 80	
"	14,793	"	.06c.	964 56	
					1,075 36
Dec.	2,946	"	.06c.		184 15
1878.					
Jan.	234½	yards	10c.	23 45	
"	9,713	"	.06¼c.	607 06	
					630 51
Feb.	3,559	"	.06¼c.		222 43
M'ch.	12,677	"	.06¼c.		792 31
Ap'l.	5,277	"	.06¼c.		329 44
May.	2,170	"	.06¼c.		135 64
June.	8,308	"	.06¼c.		519 26
July.	21,156	"	.06¼c.		1,822 27
Aug.	12,100	"	.06¼c.		757 36
Sept.	20,154	"	.06¼c.		1,259 65
Oct.	9,780	"	06¼c.		611 30
Nov.	19,088	"	.06¼c.		1,192 98
Dec.	15,270	"	.06c.		954 39
1879.					
Jan.	30,043	yards	.06¼c.		1,879 14
Feb.	38,112	"	.06¼c.		2,382 03
M'ch.	39,330	"	.06¼c.		2,458 14
Ap'l.	19,998	"	.06¼c.		1,249 90
May.	14,188	"	.06¼c.	886 75	
"	1,301	"	.04c.	52 04	
					938 79
June.	30,233	"	.06¼c.		1,889 56
July.	17,774	"	.06¼c.		1,110 90
Aug.	20,021	"	.06¼c.		1,251 33
Sept.	22,741	"	.06¼c.		1,421 36
Oct.	3,429	"	.06¼c.		214 31
Nov.	28,481	"	.06¼c.		1,780 19
Dec.	36,984	"	.06¼c.		2,311 52
1880.					
Jan.	49,219	yards	.06¼c.		3,076 19
Feb.	59,815	"	.06¼c.		3,300 95
M'ch.	49,248	"	.06¼c.		3,078 00
Ap'l.	59,623	"	.06¼c.		3,726 44
May.	46,692	"	.06¼c.		2,918 25
June.	42,307	"	.06¼c.		2,644 49
July.	7,632	"	.06¼c.		477 00
Aug.	4,320	"	.06¼c.		270 00
Sept.	7,884	"	.06¼c.	492 80	
"	7,660	"	.03c.	229 80	
					722 60
63					
Oct.	8,259	yards	.03c.	$247 77	
"	13,163	"	.06¼c.	822 68	
					1,070 45

1880.						
Nov.	8,178	"	.03c.	245 34		
"	28,527	"	.06¼c.	1,782 94		
					2,028	28
Dec.	15,696	"	.03c.	470 88		
"	52,110	"	.06¼c.	3,256 88		
					3,727	76
1881.						
Jan.	15,521	yards	.03c.	465 63		
"	20,415	"	.06¼c.	1,275 00		
				$1,740 63		
	2,930	yds. allow	.01½c.	43 80		
					1,696	83
Feb.	25,688	yards	.06¼c.	1,605 50		
"	13,042	"	.03c.	391 26		
					1,996	76
M'ch.	23,589	"	.06¼c.	1,474 31		
"	22,662	"	.03c.	679 86		
"	1,016	"	.04c.	40 64		
					2,194	81
Ap'l.	30,763	"	.06¼c.	1,922 69		
"	14,008	"	.03c.	420 24		
					2,342	93
May.	25,454	"	.06½c.	1,590 88		
"	2,817	"	.03c.	84 51		
					1,675	39
June.	13,093	"	.06¼c.	818 31		
"	14,611	"	.03c.	438 33		
					1,256	64
July.	25,350	"	.06¼c.	1,584 38		
"	9,846	"	.03c.	295 38		
					1,879	76
Aug.	18,479	"	.06¼c.	1,154 94		
"	17,795	"	.03c.	533 85		
					1,688	79
Sept.	18,892	"	.06¼c.	1,180 75		
"	7,359	"	.03c.	220 77		
					1,401	52
Oct.	23,625	"	.06¼c.	1,476 56		
"	15,911	"	.03	477 33		
					1,953	89
Nov.	41,893	"	.06¼c.	2,618 31		
"	25,570	"	.03c.	767 10		
					3,385	41
Dec.	67,849	"	.06¼c.	4,240 56		
"	8,046	"	.03c.	241 38		
					4,481	94

64

1882.					
Jan.	56,472 yards	.06¼c.	$3,528 50		
"	253 "	.03c.	7 59		
				$3,536 09	
Feb.	56,030 "	.06¼c.	3,501 88		
"	1,327 "	.04c.	53 08		
"	1,984 "	.03c.	59 52		
			$3,614 48		
		Allowance	125 00		
				3,489 48	
M'ch.	25,596 yards	.06¼c.	1,599 72		
"	5,678 "	.03c.	170 34		
				1,770 06	
Ap'l.	33,825 "	.06¼c.	2,114 06		
"	18,668 "	.03c.	560 04		
				2,674 10	
May.	38,702 "	.06¼c.	2,379 50		
"	20,474 "	.03c.	614 22		
				2,993 72	
June.	53,617 "	.06¼c.	3,351 06		
"	12,635 "	.03c.	378 95		
				3,730 01	
July.	44,186 "	.06¼c.	2,760 62		
"	5,164 "	.03c.	154 92		
				2,915 54	
Aug.	47,352 "	.06¼c.	2,959 50		
"	2,524 "	.03c.	75 72		
				3,035 22	
Sept.	27,743 "	.06¼c.	1,734 43		
"	5,235 "	.03c.	157 05		
				1,893 48	
Oct.	47,891 "	.06¼c.	3,993 21		
"	2,609 "	.03c.	78 27		
				3,071 48	
Nov.	59,115 "	.06¼c.		3,694 58	
Dec.	28,338 "	.06¼c.	1,771 12		
"	2,907 "	.03c.	87 21		
				1,858 33	
1883.					
Jan.	32,191 yards	.06¼c.	2,011 94		
"	6,033 "	.03c.	180 99		
				2,192 93	
Feb.	51,804 "	.06¼c.	$3,237 75		
"	1,224 "	.04c.	48 96		
"	16,632 "	.03c.	498 96		
				3,785 67	
M'ch.	20,117 "	.06¼c.	$1,257 31		
"	7,878 "	.04c.	315 12		

1883.					
M'ch	12,528	"	.03c.	375 84	
					1,948 27
65					
Ap'l.	13,680	yards	.04c.		$547 20
May.	74,507	"	.04c.		2,980 28
June.	71,676	"	.04c.	$2,867 04	
"	3,420	"	.03c.	102 60	
					2,969 64
July.	72,075	"	.04c.		2,883 00
Aug.	81,867	"	.04c.		3,274 68
Sept.	82,944	"	.04c.	$3,317 76	
"	1,368	"	.03c	41 04	
					3,358 80
Oct.	112,602	"	.04c.	$4,504 08	
"	1,116	"	.03c.	33 48	
					4,537 56
Nov.	71,540	"	.04c.	$2,861 60	
"	324	"	.03c.	9 72	
					2,871 32
Dec.	36,936	"	.04c.	$1,477 44	
"	3,312	"	.02¼c.	74 52	
					1,551 96
1884.					
Jan.	44,496	yards	.04c.		1,779 84
Feb.	85,839	"	.04c.	$3,433 56	
"	3,512	"	.02c.	79 02	
"	1,760	"	.03c.	52 80	
					3,565 38
M'ch.	28,537	"	.04c.		1,141 48
Ap'l.	40,010	"	.04c.		1,600 40
May.	36,361	"	.04c.		1,454 44
June.	40,160	"	.04c.		1,606 40
July.	19,462	"	.04c.		778 48
Aug.	28,144	"	.04c.		1,125 76
Sept.	32,400	"	.04c.		1,296 00
Oct.	52,098	"	.04c.		2,083 92
Nov.	34,610	"	.04c.		1,384 40
Dec.	22,604	"	.04c.		904 16
1885.					
Jan.	14,400	yards	.04c.	$576 00	
"	370½	gross	$5 50	2,037 75	
					2,613 75
Feb.	374 7/12	"	5 50		2,447 12
M'ch.	601 5/12	"	5 50		3,307 25
Ap'l.	776¼	"	5 50		4,269 38
May.	402⅓	"	5 50		2,213 75
June.	587¾	"	5 50		3,232 63
July.	751¾	"	5 50		4,134 63
Aug.	746½	"	5 50	$4,105 75	
"	20	"	5 00	100 00	
					4,205 75

1885.						
Sept.	695¾	gross	5 50	$3,826 63		
"	7¾	"	5 00	38 75		
						3,865 38
66						
Oct.	902	gross	5 50			$4,961 00
Nov.	746½	"	5 50			4,105 75
Dec.	559¾	"	5 50	$3,078 63		
"	67 139/144	"	4 00	271 86		
						3,350 49
1886.						
Jan. 1 to April 19.	390,816 yards					$14,742 83
	Total yards, 5,053,480					256,048 18

JEROME BERNHEIMER, a witness called in behalf of the complainant, testified as follows:

I am 38 years of age; I reside at New York city, and I am a merchant; I am a partner of the complainant, Abraham Shenfield, doing business under the firm name of the National Suspender Company, of which I am treasurer. I have been connected with the National Suspender Company for about 18 years.

Q. 1. When was it that the National Suspender Company introduced to the trade the looped braid end in controversy in this case?

A. In the year 1875.

Q. 2. Since the introduction of that end, to what extent has the National Suspender Company manufactured and sold suspenders provided with looped braid ends? Please to produce any statement which you have prepared with reference thereto.

(Objected to as immaterial, irrelevant, incompetent, not in rebuttal, indefinite, and as an improper method of introducing evidence, and as secondary.)

The witness produces a statement and says that it shows the number of braid purchased in yards and the total cost of such braid from May, 1875, to April 19th, 1886; also the amount of dozens of suspenders manufactured during that period and the aggregate amount of selling prices of same.

Q. 3. You say that this statement shows the number of suspenders manufactured; what do you mean by that?

(Objection repeated.)

67 A. The number of suspenders manufactured provided with the looped braid end.

Q. 4. By the looped braid end do you mean the looped braid end in controversy in this case?

(Same objection.)

A. Yes; I do.

Q. 5. According to this statement I see that the number of suspenders manufactured amounted to 261,394 dozen; how many pairs would that be?

A. Three million one hundred and thirty-six thousand seven hundred and twenty-eight pairs of suspenders.

The statement referred to is offered in evidence, and is marked "Complainant's Exhibit Bernheimer Suspender Statement."

(The last objection is repeated to the exhibit.)

Q. 6. Will you now please state upon what such statement is based and how you ascertain the facts therein set forth?

(Same objection.)

A. By personally looking over my books.

Q. 7. Whose books do you mean by "my books?"

A. The books of the National Suspender Company.

Q. 8. For how long have you been treasurer of the National Suspender Company?

A. For about 18 years.

Q. 9. Prior to the introduction of this looped braid end by the National Suspender Company what kind of suspender ends, if any, did such company manufacture?

(Objected to as immaterial and irrelevant.)

A. Leather ends, web ends, and cloth ends.

Q. 10. Please to state how the introduction of this looped braid end by the National Suspender Company affected its sales of suspenders provided with ends of the other kinds?

(Objected to as immaterial, irrelevant, and not in rebuttal, indefinite, and for incompetency.)

68 A. It decreased the sales of the other kinds, especially in the higher grades, but materially increased our business in general.

Q. 11. To what extent did it decrease the sales of the other ends, especially in the higher grades of suspenders? And please to state what you mean when you say it decreased the sales.

(Same objection repeated.)

A. In the higher grades of suspenders I think it fully decreased the sales of the other ends three-quarters. I mean by decreasing the sales of the other ends we sold fewer suspenders than before of the better grade, which were provided with web ends, leather ends, or cloth ends.

Q. 12. As I understand you, then, suspenders provided with the looped braid ends took the place of suspenders provided with the other ends; is that correct?

A. Exactly so.

Q. 13. Please to state how this looped braid end of the National Snspender Company was received by the trade?

(Last objection repeated.)

A. With very great favor; and, as I said before, our business was materially increased thereby.

Q. 14. How great a demand was there on the part of the trade for suspenders provided with these looped braid ends?

(Same objection repeated.)

A. A very great demand, as my statement will show.

Q. 15. Did that demand continue; and, if so, how did it compare from year to year?

(Same objection repeated.)

A. The demand continued and increased from year to year.

Q 16. According to your statement, I see that in the year 1884 the number of suspenders manufactured was less than 1883; please to state what occasioned that reduction.

(Same objection repeated.)

69 A. The large amount of suspenders in the market manufactured by other suspender companies with infringements of our patent.

Q. 17. What do you mean by infringements of our patents?

A. Looped braid ends.

Q. What difference, if any, was there in the standing of the National Suspender Company in the trade prior to the introduction of this looped braid end and after the introduction of such end?

(Same objection repeated.)

A. Prior to the introduction of the looped braid end the National Suspender Company was not regarded by the two largest houses in the trade, notably the Nashawannuck Suspender Company and the American Suspender Company, as great competitors. Shortly after the introduction of the looped braid end they were so regarded, and, as I said before, the sales of the National Suspender Company increased materially.

Q. 19. During your connection with the National Suspender Company have you or not been familiar with the suspender trade generally?

(Same objection.)

A. I have.

Q. 20. Please state from your knowledge of the trade how the introduction and sale of this looped braid end by your company affected the demand in the trade for suspenders provided with ends of other kinds.

(Same objection.)

A. I know that, especially in the higher grades of goods, it lessened the sale of the other ends very materially.

Q. 21. Were you always able to supply the demand for suspenders provided with these looped braid ends, or were you at any time obliged to increase your facilities for the manufacture of the same?

(Same objection.)

70 A. We were frequently obliged to increase our facilities, and the party from whom we buy our braid was also frequently obliged to increase his facilities by buying new machinery in order to supply us with the quantity of braid required.

Q. 22. Will you please state generally the advantages of this looped braid end manufactured by the National Suspender Company?

A. Its beauty, durability, neatness, ease to get on the button, and that it lays flat against the garment.

71 Cross-examination by Mr. JENNER:

Cross-Q. 70. In your firm's manufacture of suspenders have you also manufactured the webbing used therein? I mean that part which goes over the shoulders.

A. We have.

Cross-Q. 71. And the principal part of the webbing used by your firm has been of your own manufacture?

A. It has, but not all.

72 Cross-Q. 72. The webbing used by you has been of the first grade, has it not?

A. We manufacture all grades of webbing.

Cross-Q. 73. Has it been a feature of your manufacture, the weaving of a purchaser's name in the webbing?

A. We have done so, but it has never been any great feature. It was simply gotten up as a novelty for the Centennial Exhibition, as we had a loom there weaving those suspenders with names in order to have a novel exhibition and something different from our competitors.

Cross-Q. 74. Have you continued to weave in the names in the webbing since?

A. We have.

NEW YORK, *May* 1, 1886.

Met pursuant to adjournment.

Present: Same parties.

Cross-examination of JEROME BERNHEIMER continued:

Cross-Q. 77. In the account which you produced, showing
73 sales by your firm of 261,394 dozen suspenders, was there included in that account suspenders provided with ends like "Defendants' Exhibit Looped Braid End of Shenfield, No. 2?

A. There was.

Cross-Q. 78. In your answers to questions 2, 3, and 4 you referred to that statement, and in answer to question 3 you said that the statement showed the number of suspenders manufactured provided with the looped braid end, and in answer to question 4 you said that you meant by the phrase "looped braid end" the looped braid end in controversy in this case. Now, do you understand that ends like "Defendants' Exhibit Looped Braid End of Shenfield, No. 2," is in controversy in this case?

(Question is objected to if by it an attempt is made to construe the patent in controversy, this witness not being qualified as a patent expert in any sense. The counsel may inquire as to the facts included in the statement, but not as to the bearing of those facts upon the construction of the patent.)

A. I regard the exhibit marked "Defendants' Exhibit Looped Braid End of Shenfield, No. 2," simply as another form of "Complainant's Exhibit Looped Braid End of 1875."

Cross-Q. 79. Has your firm made suspender ends and attached them to suspenders the same as "Defendants' Exhibit Looped Braid End of Shenfield, No. 2," excepting that above the crossing of the braid and from that point up to the leather-attaching piece the braid was not stitched together—in other words, like figure 2 of Shenfield's patent No. 191,184, dated May 22, 1877?

A. Yes, sir.

Cross-Q. 80. And are such suspenders included in the statement produced by you?

A. They are.

Cross-Q. 81. Do the books of your firm show and do they indicate the suspenders which were provided with ends like "Complainant's Exhibit Looped Braid End of 1875," and also suspenders with ends like "Defendants' Exhibit Looped Braid End of Shenfield, No. 2," and also suspenders provided with ends like figure 2 of Shen-
74 field's patent of May 22, 1877, so that the one class can be distinguished from the other?

A. The books do not show.

Cross-Q. 82. Then you cannot tell from your books the exact number of ends of each kind referred to in my last question which your firm has made and sold during the period covered by the statement produced by you? I mean by ends, of course, ends attached to suspenders or suspenders with such ends.

A. I cannot.

Redirect examination by Mr. DICKERSON, Jr.:

Redirect Q. 83. As a matter of fact, does your firm still continue the manufacture of ends like "Complainant's Exhibit Looped Braid End of 1875," and to a large extent?

(Question objected to as indefinite.)

A. Yes, sir; we do to a large extent.

75 *Bernheimer Suspender Statement.*

Year.	Braid.		Suspenders.	
	Yards.	Amount.	Doz. suspenders.	Amount.
May, 1875	40,726	$4,251 44	1,981	$15,884
1876	170,889	17,660 72	8,302	58,114
1877	97,825	9,294 66	4,753	28,518
1878	139,486	9,227 54	6,776	40,656
1879	302,635	18,887 17	14,707	88,242
1880	453,333	27,040 11	22,036	132,216
1881	503,294	25,954 67	24,465	146,790
1882	598,525	34,660 19	29,085	145,425
1883	775,774	32,901 31	37,709	188,545
1884	469,993	18,720 66	22,848	114,240
1885	1,110,384	42,706 88	53,977	269,885
1886 to April 19th	390,816	14,742 83	18,998	94,990
	5,053,480	$256,048 18	245,637	$1,323,469
1881 M	1,296	54 00	63	378
C	51,696	2,038 06	2,513	12,565
B	84,672	3,016 34	4,116	20,580
1882 M	74,160	2,332 41	3,605	18,025
1883 F	5,184	81 91	252	1,260
1884 F	62,784	729 02	3,052	15,260
1885 F	44,352	694 35	2,156	10,780
	5,377,624	$264,994 27	261,394	$1,402,317

3,136,728 pairs of suspenders.

76 Counsel for complainant offers in evidence a copy of the record of the interference in the United States Patent Office between Abraham Shenfield and Solomon Schirmer and Jacob Betts concerning the subject-matter of the patent here in controversy; certification is waived, subject to correction. The said record is marked "Complainant's Exhibit Interference Record," and is objected to on the ground of being immaterial and irrelevant.

NEW YORK, *May* 14, 1886.

Met pursuant to notice.

Present: Mr. Dickerson, for complainant, and Mr. Jenner, for defendants.

Mr. JEROME BERNHEIMER, recalled as a witness on behalf of complainant, further testified as follows:

Q. 156. Have you heretofore testified in this case?

A. I have.

Q. 157. Will you state what difference, if any, there is be-
77 tween the class of suspenders dealt in by the wholesale dry-goods houses and by gentlemen's furnishing goods houses?

(Objected to as not in rebuttal, immaterial, irrelevant, and incompetent.)

A. Wholesale dry-goods houses always sell the cheaper line of goods and do not carry the fine goods that furnishing-goods houses do.

Q. 158. Some testimony has been given by Mr. Candee in this case in regard to the course of novelties in the suspender business in your trade; have you anything you desire to add to the statement of Mr. Candee in this regard?

(Same objection.)

A. What Mr. Candee said is perfectly true: novelties that have very little merit may sell quite largely, but only for a very short time. I know very well the ends he referred to, namely, the Russian ends, cord ends, and leather ends; to that I may add also the very popular end which we got up at one time, namely, the chain end. We had a very large sale for those for a few years, but they only sold for a short time; but any suspender ends which possess great merit will sell for a number of years. This looped braid end which we now have has now sold for eleven years past, and the sales of the same are increasing each year.

Q. 159. How many completed suspenders would be cut in the ordinary course of business from two gross yards of braid if the suspender straps were cut nine inches long, and make the same answer with reference to straps cut ten inches long.

(Objected to as not in rebuttal.)

A. The braid cut nine inches long would make sixteen dozen suspenders. If the braid was cut ten inches long it would make fourteen and one-half dozen suspenders.

Q. 160. What were the profits on your fine grade of looped braid end suspenders in the years of 1875 and 1876?

(Objected to as not in rebuttal, as irrelevant, immaterial, and incompetent.)

78 A. Five to six dollars per dozen.

Q. 161. What would be the difference in the cost of a

dozen suspenders if the braid thereof cost $5 per gross yards and if the braid thereof cost $10.50 per gross yards?

(Same objection.)

A. About seventy cents.

Cross-examination by W. A. JENNER:

Q. 164. When was the National Suspender Company formed?
A. I joined the firm about 1868.

79 The printing of Complainant's Exhibit "Interference Record" is waived for all purposes in this suit.

80 Adjourned to Monday, May 3, 1886, at 11 o'clock.

HENRY B. MESICK, called and duly sworn as a witness on behalf of the complainant, testified in answer to questions by Mr. DICKERSON, Jr., as follows:

Q. 1. What is your name, age, residence, and occupation?
A. Henry B. Mesick; age, 34 years; residence, New York city; occupation, salesman.

81 Q. 2. For whom are you salesman?
A. National Suspender Company.

Q. 3. For how long have you been salesman for the National Suspender Company?
A. Since 1880.

Q. 4. As salesman for the National Suspender Company, have you sold to the trade the looped braid suspender ends manufactured by your company?
A. Yes, sir.

Q. 5. Are you familiar with the suspender trade generally?

(Objected to as leading; no foundation shown.)

A. Yes, sir.

Q. 6. Please to state from your experience as a salesman and from your acquaintance with the trade how these looped braid ends of the National Suspender Company have been received by the trade and how the trade has looked upon them.

(Same objection, and also as immaterial, irrelevant, and not in rebuttal.)

A. Well, the trade looked upon them as being one of the best things that was ever shown in the market as a suspender ends; that has been my experience.

Q. 7. From your experience, what proportion of the better class of suspenders sold are provided with looped braid ends?

(Same objection; no foundation shown.)

A. Well, sir, I should judge the better class of goods—you mean fine goods—at least fifty or seventy-five per cent. that comes out of that goods.

Q. 8. Are you acquainted with the salesmen of the different houses in the suspender trade?

A. Most of them; principal ones I am; yes, all the larger ones.

Q. 9. What is the reputation among such salesmen of suspenders provided with looped braid ends?

(Same objection.)

82 A. Well, they seem to think that I have an advantage over them, and if they only had the same kind themselves they would be much better off and make larger sales; I can sell goods when they cannot.

Q. 10. Are you acquainted with Mr. Moritz Altmann, of Philadelphia?

A. Yes, sir.

Q. 11. Have you ever seen him at the store of the National Suspender Company in this city?

A. I have, on Broadway.

Q. 12. During what years have you seen him at the office of the National Suspender Company in this city?

A. I think I saw him there in the summer of 1880, and also saw him in 1881.

Q. 16. Prior to becoming a salesman for the National Suspender Company had you been connected with the suspender trade?

A. Yes; I went with the American Suspender Company in 1869; stock boy at first; stayed there till 1879.

Cross-examined by Mr. JENNER:

Cross-Q. 17. How long have you been salesman for the National Suspender Company?

A. Since 1880, June.

83 Cross-Q. 18. During the year 1885 what proportion of the total output of suspenders by the National Suspender Company were provided with braided ends?

A. You mean the proportion of sales were made on all the goods—you mean?

Cross-Q. 19. Yes; during the year 1885.

A. Well, I should reckon at least fifty per cent.; more than that, my share of it.

84 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the twelfth day of December, in the year of our Lord one thousand eight hundred and eighty-four.

Present: The Hon. William J. Wallace, circuit judge.

ABRAHAM SHENFIELD
vs.
NASHAWANNUCK MANUFACTURING COMPANY, CHRISTOPHER MEYER, President; George H. Newman, Treasurer, and E. E. Candee, Agent.

On the bill of complaint heretofore filed in this cause, and on

reading and filing the notice of motion for a preliminary injunction against the defendants herein, and the affidavits in support thereof of Meyer Marcus and Lemuel W. Serrell, and on reading and filing the affidavits of Max Blau, Moses Hirsch, Benjamin Russak, Louis Clark, Jr., and Henry L. Brevoort in opposition to said motion, after hearing Edward N. Dickerson and Edward N. Dickerson, Jr., in support of said motion and Edmund T. Wetmore in opposition thereto, it is now, on motion of Messrs. Dickerson & Dickerson, complainant's solicitors—

Ordered, That a preliminary injunction issue out of and under the seal of this court, enjoining and restraining the defend-
85 ants above named, their and each of their officers, clerks, attorneys, agents, servants, and workmen, until the further order of this court, from making, using, or selling the patented improvement described and claimed in the letters patent granted to Abraham Shenfield for an improvement in suspender button straps, dated November 9, 1875, and numbered No. 169,855, as prayed for in said bill of complaint.

86 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM SHENFIELD
against
THE NASHAWANNUCK MANUFACTURING COMPANY *et al.*

Please take notice that on the 3d day of April, 1885, at the opening of court on that day, or as soon thereafter as counsel can be heard, and at the court-rooms of this court, in the city of New York, we shall move for an order vacating and setting aside the preliminary injunction heretofore granted herein. The said motion will be made upon the pleadings and all of the proceedings in the case of this complainant against the defendant, and also upon the pleadings in the case of this complainant against Bloomberg, and the same against Thorndike Manufacturing Company *et al.*, and upon all the affidavits filed in behalf of the defendants in said Bloomberg and said Thorndike Manufacturing Company's cases upon the motion for preliminary injunction in said cases respectively, and upon the exhibits thereto attached or therein referred to, and also upon the affidavit of Phillips Abbott, executed March 28, 1885.

The said affidavits are as follows, to wit: Moritz Altmann, executed January 22, 1885; Bertha Altmann, executed January 22, 1885; Samuel Clarkson, executed January 14, 1885; John M. Goodier, executed January 22, 1885; Francis E. Johnson, executed January 21, 1885; Charles E. Pratt, executed January 21, 1885; James O. West, executed January 27, 1885; Alfred Harris,
87 executed January 21, 1885; Max Blau, executed January 21, 1885; Louis Clark, Jr., executed January 21, 1885; Morris Hirsh, executed January 23, 1885; Henry L. Brevoort, executed January 24, 1885; another affidavit of said Brevoort made in this case, executed November 14, 1884; William P. Ellison, executed

February 12, 1885; William A. Laverty, executed February 12, 1885; William A. Miller, executed February 12, 1885. Copies of the foregoing affidavits have heretofore been served upon you; also the following additional affidavits, copies of which are hereupon served on you:

Phillips Abbott's affidavit made in this case, executed March 28, 1885, and the following affidavits made in the said Bloomberg and Thorndike cases, to wit, copies of which are herewith also served upon you: Joseph W. Bradley, executed February 14, 1885; Christopher E. Hertlein, executed February 26, 1885; Samuel Clarkson, executed February 25, 1885; Edward S. Martin, executed February 25, 1885; Isadore Altmann, executed February 25, 1885; Granville H. Leonard, executed February 25, 1885; Bernhard S. Depew, executed February 20, 1885; Isaac S. Smith, Jr., executed February 19, 1885; George W. Fiss, executed February 20, 1885; John Klemm, executed February 19, 1885; Henry S. Stokes, executed 19th February, 1885; Louis Oppenheimer, executed February 25, 1885; John H. Shelmire, executed February 25, 1885; Levi Mastbaum, executed February 19, 1885; Francis E. Johnson, executed February 26, 1885; Joseph W. Bradley, executed February 26, 1885; Frank O. Painter, executed February 26, 1885; George B. Gurley, executed February 27, 1885; Edward D. Candee, executed February 27, 1885; Moritz Altmann, executed March 3, 1885; James O. West, executed March 7, 1885. The exhibits referred to in said affidavits are attached to the same and are on file in the respective cases in the clerk's office, and are there open for your inspection.

New York, March 28, 1885.

WETMORE & JENNER,
Solicitors for Defendants.

To Dickerson & Dickerson, solicitors for complainants.

88 Service admitted this 28th March, 1885, of the above notice and the motion papers, part of them having been heretofore served and part of them served with the notice on this day, as set forth in said notice.

DICKERSON & DICKERSON,
Solicitors for Complainant.

United States Circuit Court, Southern District of New York. In Equity.

SHENFIELD
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.*

Motion Papers to Vacate Preliminary Injunction.

Motion to vacate preliminary injunction is denied.
May 11, 1885.

WILLIAM T. WALLACE.

(File-mark:) U. S. circuit court. Filed May 13, 1885. Timothy Griffith, clerk.

89 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States for the southern district of New York, do hereby certify that the foregoing are true and correct copies of a notice of motion to vacate a preliminary injunction and of the endorsement upon the motion papers attached to said notice in the suit of Abraham Shenfield against The Nashawannuck Manufacturing Company *et al.*, in equity, now on file and remaining of record in my office.

In witness whereof I have subscribed my name and have caused the seal of said court to be hereunto affixed this fifteenth [SEAL.] day of May, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and tenth.

TIMOTHY GRIFFITH, *Clerk.*

91 UNITED STATES PATENT OFFICE.

ABRAHAM SHENFIELD, of New York, N. Y.

Improvement in Suspender Button-Straps.

Specification forming part of Letters Patent No. 169,855, dated November 9, 1875; application filed August 2, 1875.

To all whom it may concern:

Be it known that I, Abraham Shenfield, of the city and State of New York, have invented an improvement in suspenders, of which the following is a specification:

Suspender-ends have been made of leather, felt, jean, and similar material, with the button-hole cut in the same, and in most instances the materials have been pasted together, in addition to lines of stitching surrounding the button-hole.

Suspender-ends have also been made of a round cord, with the ends turned back and fastened to form loops; but this round cord is objectionable, as it does not lie flat against the person or beneath the buttons.

I make use of a suspender-end made of a double flattened cord or strip, bent around into a loop, and united together, leaving sufficient of the loop open to form the button-hole. At the other end the suspender-end is united to a buckle or clasp by a loop, or folded piece of leather, or other material stitched to the suspender-end. My suspender-end, made as aforesaid, is a new and very useful article of manufacture.

In the drawing—

(Here follows diagram marked p. 90.)

A. SHENFIELD. 90

SUSPENDER BUTTON-STRAP.

No. 169,855. Patented Nov. 9, 1875.

No. 177. Shenfield & Nashawannuck Manfg Co. Mass. p. 90

Fig. 1.

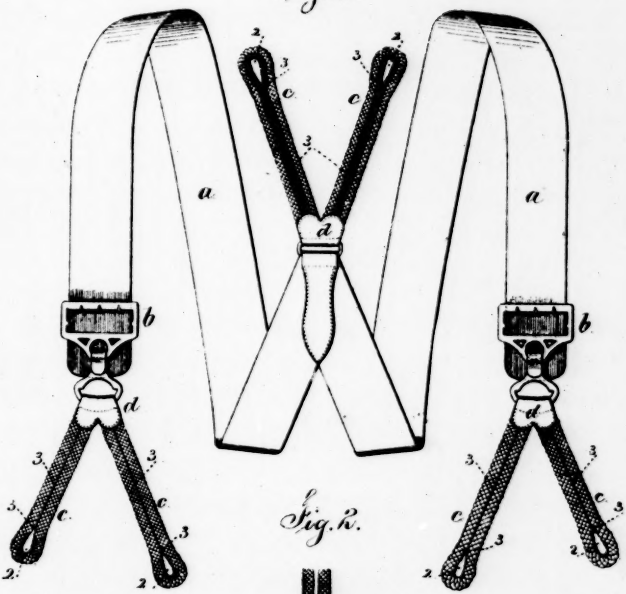


Fig. 2.

Witnesses,

Chas. H. Smith

Geo. P. Barckney

Inventor

Abraham Shenfield

by Samuel W. Serrell

atty

Figure 1 is a perspective view of the suspender complete, and Fig. 2 illustrates the mode of making the suspender-end.

The straps *a* and buckles *b* of the suspender are of any usual or desired character, and the suspender-ends *c* are received between the attaching-pieces *d*, and united by sewing or otherwise. Each suspender-end is formed of a flattened cord or strip folded to form the button-hole loop 2, and the edges united together, as at 3, so as to leave the necessary opening for the button.

The cord or strip of flat material is composed of silk, linen, cotton, worsted, or other suitable threads, or a mixture of two or more, and the threads are woven, braided, knitted, crocheted, or otherwise laid up into the form of a complete flat cord or strip, and when the strip is folded to form the button-hole loop the seam at 3 may be made by sewing, knitting, crocheting, or otherwise; or the knitting or crocheting is commenced at the central line 3, and extended at both sides thereof and around the button-hole by the successive ranges of interlocked loops.

This suspender-end can either be made by hand or by machinery.

I claim as my invention—

The suspender-end made of a flat cord or strip of fibrous material, bent into a loop, laid flatwise, united at the inner edges 3, and connected to the attaching-pieces *d*, as set forth.

Signed by me this 30th day of July, A. D. 1875.

ABRAHAM SHENFIELD.

Witnesses:

GEO. T. PINCKNEY.

CHAS. H. SMITH.

93 UNITED STATES PATENT OFFICE.

ABRAHAM SHENFIELD, of New York, N. Y.

Improvement in Suspenders.

Specification forming part of Letters Patent No. 191,184, dated May 22, 1877; application filed April 13, 1877.

To all whom it may concern:

Be it known that I, Abraham Shenfield, of the city and State of New York, have invented an improvement in suspenders, of which the following is a specification:

Suspender-ends have been made of flat braided cord, laid around to form a loop, and united longitudinally, leaving a button-hole at the end, as seen in letters patent No. 169,855, granted to me.

My present invention is an improvement upon the aforesaid invention and patent; and it consists in a suspender-end made of a flat braided cord laid together double to form a loop and button-hole at one end, and crossed one or more times and attached at the points of crossing, so that the risk of the button-hole ripping or enlarging will be lessened. The suspender-end will be rendered more elastic than heretofore, because the braid will be crossed diagonally,

and the strain will tend to draw the braid into a straight line, and the appearance of the suspender-end will be rendered more ornamental.

In the drawing—

(Here follows diagram marked p. 92.)

Figure 1 is an elevation of the suspender-ends adapted to the front ends of the suspender. Fig. 2 is a view of the ends as adapted to the back of the suspender, and Fig. 3 is a section at the line *x x*.

The flat braided cord *o* is of suitable material and size, and it is of a length sufficient to be bent double to form the button-hole *a* at the end, and the braided cord is laid flatwise, the parts passing over and across one another, as at *b*, where they are united firmly by sewing. The ends of the cord are received by and secured within the leather head-pieces *d d*, as in the aforesaid patent, and these head-pieces *d* are connected by the buckle or frame *e* with the suspender in any desired manner.

In Fig. 2 the cord *o* is open between the crossing-point *b* and the head-piece *d*, as seen at *f*; or the adjacent edges may be sewed together, as at *g*; or the flat braided cords may be crossed once or more times between the crossing-point *b* and the head-piece *d*, as seen in Fig. 1.

The suspender-end is rendered stronger, more elastic, and its appearance improved by the flat braided cord being crossed and attached as aforesaid.

I claim as my invention—

The suspender-end made of a flat braided cord, bent double and crossed to form a button-hole at the end, and the cord secured together at the crossing by stitches, substantially as set forth.

Signed by me this 10th day of April, 1877.

ABRAHAM SHENFIELD.

Witnesses:

GEO. T. PINCKNEY.

CHAS. H. SMITH.

94 Circuit Court of the United States, Southern District of New York. In Equity.

ABRAHAM SHENFIELD
against
THE NASHAWANNECK MANUFACTURING COMPANY *et al.*

The answer of the Nashawanneck Manufacturing Company—Christopher Meyer, president; George H. Newman, treasurer, and E. D. Candee, agent, of said company—respondents, to the bill of complaint exhibited against them by the above-named complainant.

The respondents, now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception which may be had or taken to the manifold errors, uncertainties,

No. 177.
Stanford
&
N. Mfg Co
et al.

p. 92

A. SHENFIELD.

92

SUSPENDERS.

No. 191,184.

Patented May 22, 1877.

Fig. 2.

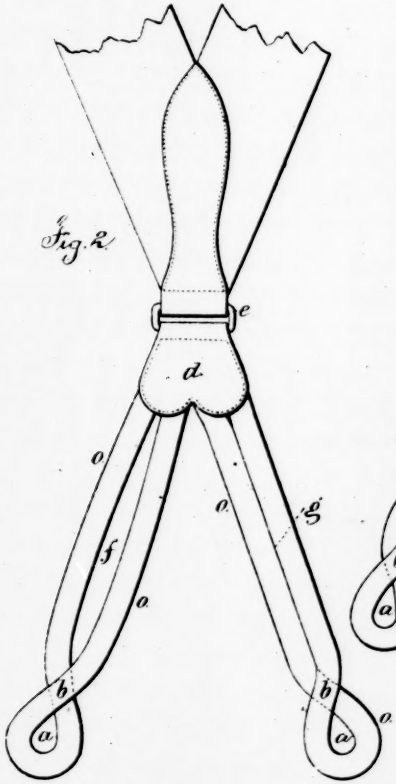


Fig. 1.

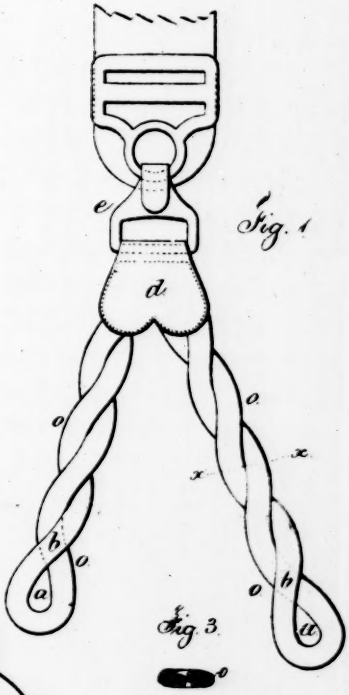


Fig. 3.

Witnesses

Chas. H. Smith

Harold Ferrell

Inventor.

A. Shenfield.

per Lemuel W. Serrell

Atty

imperfections, and insufficiencies of the said bill of complaint, for answer thereto or to so much as they are advised it is material or necessary to make answer to, answering, say—

That upon information and belief alone they admit that letters patent of the United States were issued to the complainant in this bill and at the date therein referred to for the alleged invention therein referred to, but whether any of the provisions or requirements of law were duly or at all complied with they have no knowledge or information and cannot set forth and leave the complainant to make such proof thereof as he may be advised.

95 And the respondents, further answering on information and belief, deny that they have ever at all in any way infringed upon the aforesaid letters patent, or that they now are infringing upon the same or intend so to do, either by making, using, or vending to others to be used, or otherwise, the said invention, as alleged in the bill of complaint or otherwise, or that they have made any profit therefrom or caused any damage to the complainant thereby.

And the respondents, further answering, say that they are informed and believe that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention had been, prior to the said alleged invention or discovery thereof, patented by the following-named persons in and by the following-named patents of the United States of America, to wit:

Granted to Julius Hotchkiss, dated June 27, 1854, No. 11160.

Granted to Hotchkiss & Merriman Manufacturing Company, assignees, &c., dated December 23, 1851, number 8606.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention had been described in some printed publication prior to the supposed invention or discovery thereof by the complainant, to wit:

In a publication entitled "Harper's Bazaar," vol. 1, No. 48, p. 756, published in the city of New York, State of New York.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged inventor was not the original and first inventor or discoverer of any material or substantial part of the said alleged invention or discovery; but that the same and every material and substantial part thereof had been previously used by and known to the following persons at the places set opposite their names respectively, such persons now residing, to

96 the best of the respondents' knowledge and belief, at the places respectively specified.

John McAuley, of New York city, New York, at said New York city and elsewhere.

Max Marcus, of New York city, New York, at said New York city and elsewhere.

Samuel Bernstein, of New York city, New York, at said New York city and elsewhere.

William J. Gibson, of New York city, New York, at said New York city and elsewhere.

Jacob Betts, of New York city, New York, at said New York city and elsewhere.

Mary Eustace, Adolph Smith, Pauline Smith, Joseph Lowenstein, Solomon Schirmer, Abraham Binder, Moritz Schoen, Barnett, Chlebowski, Susie Craig Sullivan, Henry Green, William J. Gurley, Marks Gangel, Moses Hirsch, Max Blau, Louis Clarke, Jr., Benjamin Russak, all of said New York city, at said city and elsewhere; Adolph Smith, of Brooklyn, New York, at said Brooklyn and elsewhere.

And the respondents aver and charge the fact to be that the suspenders made and sold by them are so made and sold under and by virtue of their exclusive right so to do as owners of the United States letters patent granted to M. Marcus, dated respectively December 4th, 1883, No. 289,429, and March 4th, 1884, No. 294,396.

And the respondents deny that said letters patent or the alleged rights of the complainant have been ever at all acknowledged or acquiesced in, but, on the contrary, that the said alleged inventions have been publicly used in defiance and disregard of any alleged rights of the complainant.

And the respondents deny all and all manner of unlawful combination by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied), true to the knowledge or belief of the re-
97 spondents; all which matters and things the respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

NASHAWANNECK M'F'G CO.,
By C. MEYER, *President.*
E. D. CANDEE.
C. MEYER.

WETMORE & JENNER,
Respondents' Solicitors.
WM. A. JENNER, *Of Counsel.*

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*
City and County of New York,

On this 5th day of December, 1884, before me came E. D. Candee and C. Meyer, two of the above-named respondents, and, being by me duly sworn, did each for himself depose and say that he had read the foregoing answer, and that the same is true of his own knowledge except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

E. D. CANDEE.
C. MEYER.

Subscribed and sworn to before me this 5th December, 1884.
PHILLIPS ABBOTT,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

98 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM SHENFIELD
against
THE NASHAWANNECK MANUFACTURING COMPANY *et al.*

A motion for leave to amend the answer herein having come on to be heard, now, upon reading the affidavits of Phillips Abbott, dated Feb. 26, 1885, and March 21, 1885, respectively, and the affidavits of Edward E. Candee, dated February 26, 1885, and March 3, 1885, respectively, and upon hearing Edmund Whetmore for the motion and Edward N. Dickerson, Jr., opposed—

It is ordered that the defendants may amend their answer by filing the amendment hereto annexed.

99 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM SHENFIELD
against
THE NASHAWANNECK MANUFACTURING COMPANY *et al.*

Now, this 27th day of March, 1885, come the defendants herein and hereby amend their answer by inserting immediately at the end of the list of persons alleged to have prior knowledge and use of the said invention, as set forth in said answer, the following additional names, to wit: Francis E. Johnson, Joseph W. Bradley, —— West, and Charles E. Pratt, all of said New York city, in the State of New York, at said city of New York and elsewhere.

By Moritz Altmann and Bertha Altmann, of Camden, New Jersey, at said Camden, at Philadelphia, Pennsylvania, and elsewhere.

By Samuel Clarkson, Bernard S. Dupuy, and John M. Goodier, all of said Philadelphia, at said Philadelphia and elsewhere.

By James O. West, of Spencer, Iowa, at said Spencer, at said New York city, and elsewhere.

100 United States Circuit Court, Southern District of New York.
In Equity.

ABRAHAM SHENFIELD
against
NASHAWANNUCK MANUFACTURING COMPANY.

Complainant hereby admits that prior to the year 1870 there had frequently been publicly used in the manufacture and wearing of

cloaks and jackets button loops formed of flat braid bent edgewise upon itself and sewed together at the meeting edges, leaving an opening for the button-hole at the bend; that the ends of the braid in such button loops were permanently attached to a button or like device which was affixed to one side of the body of the garment, and that the button loop held the garment together by being buttoned onto a button or like device sewed to the other side of the garment, and that when in use the braid forming the button loop rested under the button, and that such braids were made by machinery.

Samples of such button loops are hereto attached.

It is stipulated, however, that the two brown braid loops without fur are incomplete, in that they are not provided with the concealing rosette or button placed over the ravelled ends of the same and are unprovided with any method of attaching the loop to one side of the garment or with any method of attaching or fastening the loop to the other side of the garment.

It is also hereby further admitted that towel loops, the same as shown in the sketch hereto annexed, marked "Def'ts' Exhibit Towel Loop," were illustrated and their method of construction as
101 follows described in "Harper's Bazaar" of September 26th, 1868, at page 756:

Description.

"The crochet loop, Fig. 1, is worked with fine cotton. Make first a foundation of 36 chain, and, having joined this in a round by means of a slip stitch, 20 chain more, passing over the last of these. Work back on these chain stitches and around the loop and on the other side of the chain stitches a round single crochet, and on this backward and forward three additional rounds in the same manner a few stitches must be added around the upper rounding of the loops, as shown by the pattern."

The said description and illustration being the one referred to by Judge Wallace in his decision published in 21 Federal Reporter, page 241.

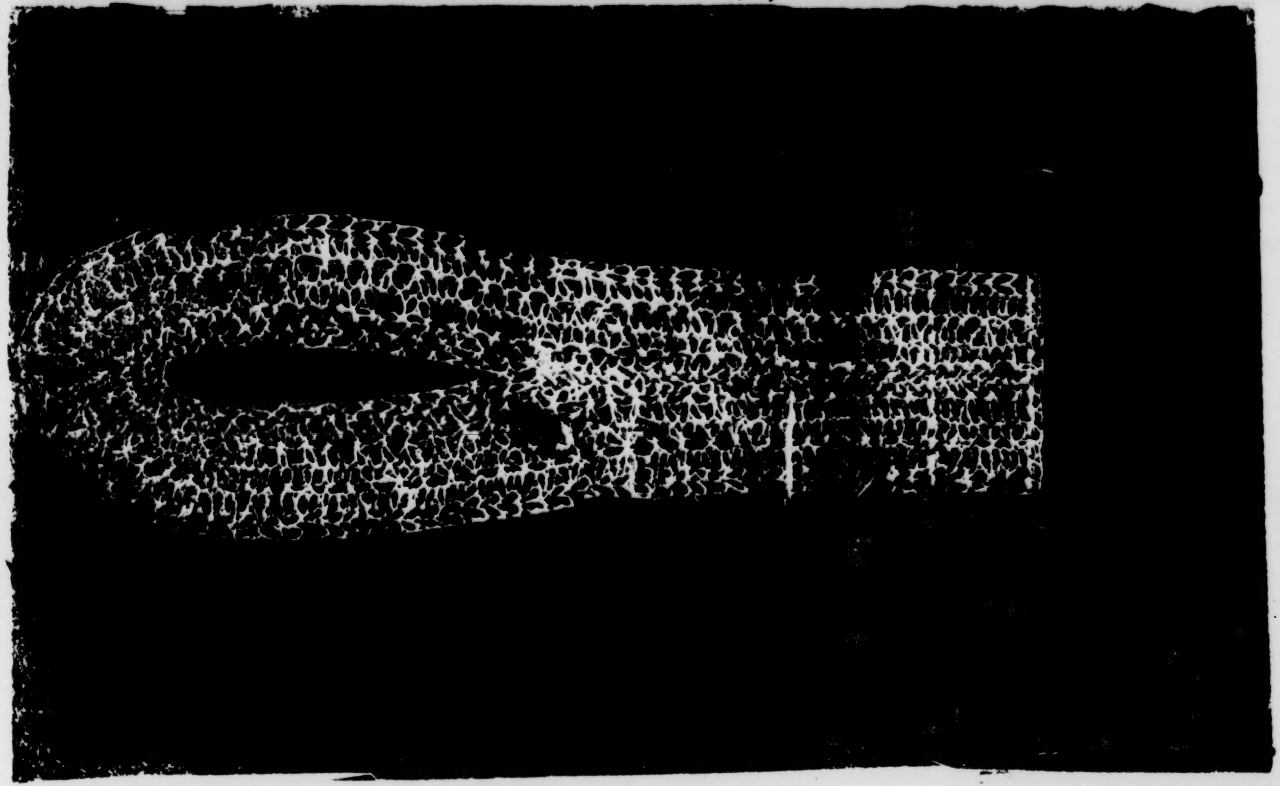
It is agreed that defendants may offer in evidence a certified copy of the file wrapper and contents of the Shenfield patent in suit with the same force and effect as though duly so offered prior to the expiration of their time for testimony herein.

DICKERSON & DICKERSON,
Solicitors for Complainant.
WETMORE & JENNER,
Solicitors for Defendants.

January 22, 1886.

(Here follows diagram marked p. 101.)

No. 177 Steufred v. N. Mfg. Co. Stat. — p. 101.



102 SHENFIELD
vs.
NASHAWANNUCK.

DEFENDANTS' EXHIBIT FILE WRAPPER SHENFIELD PATENT. J. H. I., Oct. 28, 1885.

(2–175.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of
103 the letters patent granted Abraham Shenfield November 9th, 1875, number 169,855, for improvement in suspender button straps.

In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 22d day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

Seal Patent Office, United States of America.

M. V. MONTGOMERY,
Commissioner.

$15, check; model, 1 dr.

To the Honorable Commissioner of Patents:

Your petitioner, Abraham Shenfield, of the city and State of New York, prays that letters patent may be granted to him for the invention of improvement in suspenders set forth in the annexed specification.

And further prays that you will recognize Lemuel W. Serrell, of the city of New York, N. Y., as his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

New York, N. Y., July 30th, 1875.

ABRAHAM SHENFIELD.

UNITED STATES OF AMERICA,
City, County, and State of New York, } *ss:*

On this 30th day of July, in the year one thousand eight hundred and seventy-five, before the subscriber, a notary public
104 in and for said State, personally appeared the within-named Abraham Shenfield and made solemn oath that he verily believes himself to be the original and first inventor of the within-described improvement in suspenders; and that he does not know and does not believe that the same was ever before known or used, and that he is a citizen of the United States and a resident of New York, N. Y.

ABRAHAM SHENFIELD.

Sworn to before me the day and year above written.
CHAS. H. SMITH,
[L. S.] *Notary Public, Kings Co.*

To all whom it may concern:

1. Be it known that I, Abraham Shenfield, of the city and State of New York, have invented an improvement in suspenders, of which the following is a specification:

2. Suspender ends have been made of leather, felt, jean, and similar material, with the button-hole cut in the same, and in most instances the materials have been pasted together, in addition to lines of stitching surrounding the button-hole.

3. In some cases cords have been used to form the suspender ends, but button-hole pieces of the aforesaid character have been attached to such cords. Suspender ends have also been woven with a button-hole in the fabric. In this case the strain comes most directly upon the weft threads at the ends of the button-holes, and these are liable to break, and also to cut or wear the threads that attach the button. Besides this, the woven strips have to be cut off below the button-holes and the ends rounded and bound.

Erase & insert "H," Sept. 29, 75.

4. My invention is made for obtaining great strength and durability in the suspender end, and at the same time lessening the wear upon the button-attaching threads and obtaining a pliable and easily manipulated suspender end.

105

5. I make use of a suspender end made of a double flattened cord or strip, bent around into a loop and united together, leaving sufficient of the loop open to form the button-hole. At the other end the suspender end is united to a buckle or clasp by a loop or folded piece of leather or other material stitched to the suspender end.

6. My suspender end, made as aforesaid, is a new and very useful article of manufacture.

7. In the drawing, Fig. 1 is a perspective view of the suspender complete, and Fig. 2 illustrates the mode of making the suspender end.

8. The straps *a* and buckles *b* of the suspender are of any usual or desired character, and the suspender ends *c* are received between the attaching pieces *d* and united by sewing or otherwise.

9. Each suspender end is formed of a flattened cord or strip folded to form the button-hole loop 2 and the edges united together, as at 3, so as to leave the necessary opening for the button.

10. The cord or strip of flat material is composed of silk, linen, cotton, worsted, or other suitable threads or a mixture of two or more, and the threads are woven, braided, knitted, crocheted, or otherwise laid up into the form of a complete flat or [round]* cord or strip, and when the strip is

P'r am't.

Words and sentences enclosed between rules erased in copy.
* Words and figures enclosed in brackets erased in copy.

folded to form the button-hole loop the seam at 3 may be made by sewing, knitting, crocheting, or otherwise, or the knitting or crocheting is commenced at the central line 3 and extended at both sides thereof and around the button-hole by the successive ranges of interlocked loops.

This suspender end can either be made by hand or by machinery.

I claim as my invention—

Erase & insert "B," Sept. 29, '75.	A suspender end made of a cord or strip of fibrous material passing around the button-hole and united at 106 the other end to the suspender, substantially as specified.

Signed by me this 30th day of July, A. D. 1875.

ABRAHAM SHENFIELD.

Witnesses:

GEO. P. PINCKNEY.

CHAS. H. SMITH.

(Endorsed:) Dated July 30, 1875. Abraham Shenfield. Imp't in suspenders. Filed Aug. 2, '75. $\frac{826}{186}$. Patent Office, Aug. 2, 1875, U. S. A.

(No. 1.)

Examiner's room No. 5.

U. S. PATENT OFFICE,

WASHINGTON, D. C., *Aug. 16th*, 1875.

Abraham Shenfield, care Lemuel W. Serrell, N. York city:

Your application for a patent for an imp't in suspenders, filed Aug. 2, 1875, has been examined and found to involve no invention in view of the state of the art as indicated by the following references: Patents to John Hotchkiss, No. 8606, Dec. 23, 1851, and F. A. Garnier, No. 151,216, May 26, 1874; class, "apparel;" subdiv., "suspenders."

A patent is therefore refused.

H. B. BLANDY, *3d Ass't.*

App'd: WM. BURKE, *Ex'r.*

(Endorsed:) Abraham Shenfield. Rej. Aug. 16, 1875. $\frac{826}{186}$.

NEW YORK, *Sept. 28th*, 1875.

To Hon. Commissioner of Patents.

SIR: In the matter of my application for a patent on sus-
107 penders, filed Aug. 2, 1875, I amend the specification by erasing paragraphs 3 and 4 and inserting:

Words and sentences enclosed between rules erased in copy.

Suspender ends have also been made of a round cord with the ends turned back and fastened to form loops, but this round cord is objectionable, as it does not lie flat against the person or beneath the buttons.

"H," Sept. 29, '75.

By erasing the word "round," about the middle of paragraph 10. Also by erasing the claim and inserting:

"B." Erase & insert "C," Oct. 22, '75.

The suspender end made of a flat cord or strip of fibrous material bent into a loop, laid flatwise and united together at the inner edges, except the portion that is left to form the button-hole, substantially as set forth.

ABRAHAM SHENFIELD,
Per L. W. SERRELL, *Att'y.*

(Endorsed:) Inventor, A. Shenfield; invention, suspender. 1st amendment. For room No. 5. Filed Sept. 29, '75. $\frac{8\,9\,6}{1\,8\,6}$. Patent Office, Sept. 29, 1875, U. S. A.

Room 5.

U. S. PATENT OFFICE,
WASHINGTON, D. C., *Oct. 12th*, 1875.

Abraham Shenfield, care Lemuel W. Serrell, N: York city:

Your application for a patent for an imp't in suspenders, filed Aug. 2, 1875, has been reconsidered as amended Sept. 29, 1875. See further the loop illustrated in "Harper's Bazaar" of 1868, page 756, "Crochet towel loop," Fig. 1, in view of which a patent must be again refused.

H. B. BLANDY, *3d Ass't.*

App'd: C. W. CHAPMAN, *Ex'r.*

(Endorsed:) A. Shenfield. Rej. Oct. 12, '75. $\frac{8\,9\,6}{1\,8\,6}$.

108 & 109

NEW YORK, *October* 19, 1875.

Hon. Commissioner of Patents.

SIR: In the matter of my application for a patent on improvement in suspenders, filed Aug. 2, 1875, I amend the specification by erasing the claim and inserting:

"C," Oct. 22, '75.

The suspender end, made of a flat cord or strip of fibrous material, bent into a loop, laid flatwise, united at the inner edges 3, and connected to the attaching pieces *d*, as set forth.

A. SHENFIELD,
Per L. W. SERRELL, *Att'y.*

Words and sentences enclosed between rules erased in copy.

(Endorsed:) Inventor, A. Shenfield; invention, suspenders. 2d amendment. For room No. 5. Filed Oct. 22, '75. Patent Office, Oct. 22, 1875, U. S. A. $\frac{8\,9\,6}{1\,8\,6}$.

$20 *Check.*

Office for patents, 119 & 121 Nassau street.

NEW YORK, *Nov. 5th*, 1875.

SIR: Inclosed herewith I send twenty dollars, balance of fee on the application for letters patent of Abraham Shenfield for imp. in suspenders.

Allowed Nov. 2, 1875.

The patent when issued you will please forward to my care.

Respectfully yours, LEMUEL W. SERRELL.

Hon. Commissioner of Patents.

(Endorsed:) Patent Office, Nov. 6, 1875, U. S. A. 8. 1875. Burke. No. 169,855. $\frac{8\,9\,6}{1\,8\,6}$.

110 United States Circuit Court, Southern District of New York.

ABRAHAM SHENFIELD
against
NASHAWANNUCK MANUFACTURING COMPANY.

Stipulated that the following letters patent of the United States may be offered and are deemed in evidence on defendant's behalf with the same force and effect as if the same had been offered in evidence during the taking of defendant's evidence in answer:

H. F. Briggs, No. 5565, dated May 16th, 1848.
J. Hotchkiss, No. 8606, dated December 23d, 1851.
J. Hotchkiss, No. 11160, dated June 27th, 1854.
D. W. Canfield, No. 37149, dated December 16th, 1862.
A. W. Upton, No. 47348, dated April 18th, 1865.
T. J. Flagg, No. 144,970, dated November 25th, 1873.

The objection that the same are not certified is waived.

Dated New York, May 5, 1886.

DICKERSON & DICKERSON,
For Complainant.

111 HENRY F. BRIGGS.

Imp't in Shoulder-Braces.

Specification forming part of Letters Patent No. 5565, dated May 16, 1848.

To all whom it may concern:

Be it known that I, Henry F. Briggs, of Poughkeepsie, in the county of Duchess and State of New York, have made certain improvements in the mode of constructing a suspender combining a

spinal and shoulder brace, and I do hereby declare that the following is a full and exact description.

Such is the application and arrangement of elastic straps in this brace that whatever may be the inclination of the body, forward or sidewise, or the motions of the shoulders, their action tends to assist the muscles to restore an upright and natural position; consequently its use will have a tendency to preserve the symmetrical development and natural tone of all the muscles with which it acts.

The weight that renders it effective is in the pants of the male and skirts of the female. Thus, as a suspender for the male and skirt supporter for females, it acts on physiological principles; for while the weight of the clothing contributes to the power of the brace, the brace yields to all the motions of the body without unpleasantly drawing the clothes. Hence it exerts no injurious pressure on any part of the body, nor does it circumscribe the action of any muscle or set of muscles.

It has no belt around the waist; consequently it produces no injurious pressure upon the epigastric region or any other interference with the respiratory muscles.

For ordinary cases of round shoulders or contracted chests it is an efficient remedy. It is also useful in cases of spinal curvature.

The point of greatest pressure is over and about the acromion process, which pressure being backward the action of the
112 trapizins and other muscles is thus aided, and the respiratory muscles are thus better able to raise the ribs and assist difficult respiration.

It aids the satissinnis dorsi and trapizin muscles in restoring the body to an erect position, where it inclines to either side, and affords resistance to the splenius, complexus, dersal, and other muscles of the back in retaining the vertibral column in a natural erect position.

These various effects are produced by the peculiar arrangement and elasticity of the different parts of the brace, especially the suspender part. (See drawing, E E E G.)

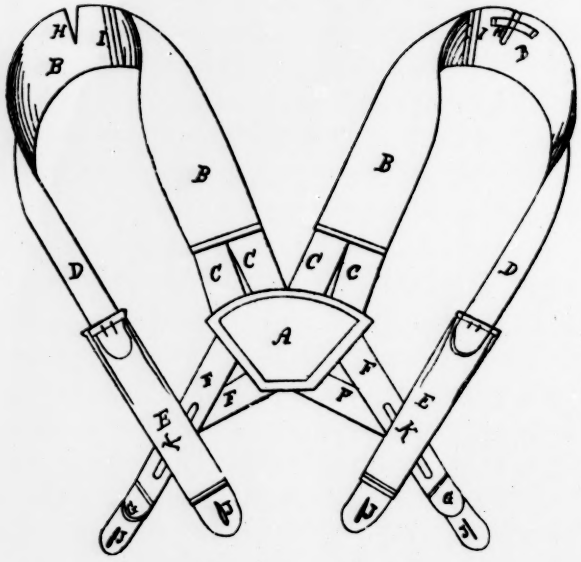
To enable others to make and use my invention I will proceed to describe its construction and operation. I construct the back piece (see drawing, letter A) and shoulder caps B B B B of satin, jean, or other suitable material. One end of the shoulder caps B B I connect to the back piece A by means of elastic straps *c c c c*, spiral springs, or any other substance which will produce the required elasticity, and to the other end of said caps is attached a strip of cotton webbing, D D, or other suitable material, which is connected by means of a buckle to elastic straps E E, which support the pantaloons behind and which serve in part as suspenders. The pantaloons are supported in front by the attachment on each side, just above the hip, of straps G G. Connecting elastic straps F F F F, which are attached to back piece A K K, are wires or other suitable material, so arranged as to allow straps E E free play while it connects them with F F and G.

From the outer edge of shoulder caps B B, I cut out a gore nearly

H. F. Briggs. 114

Suspenders.

No. 5565. Patented May 16. 1848



No. 177.
Shenfield
N. Mfg. Co. Ct.
} p. 114

half across said caps, bring the outer edges of said caps together, and insert a piece of elastic, H H, about one inch long and half an inch wide, to give freedom of action to the shoulders and upward motions of the arm and prevent disagreeable tightness under the arm, and also to cause said caps the better to fit the shoulders.

Just back of these elastic pieces H H thin pieces of whalebone I I are inserted across the caps B B to prevent them from wrinkling.

113 The brace for ladies differs from that for gentlemen in the following particulars, viz: Instead of button-holes J J J J buttons are used, to which the skirts are attached by means of loops.

The power of the brace can be increased or diminished at pleasure by means of buckles connected with straps G G D D.

What I claim as my invention and desire to secure by letters patent is the manner of constructing the brace by combining with the shoulder-strap the straps F F and E, with their loops for fastening, in the manner set forth, and in combination therewith the elastic piece in the shoulder-strap, as set forth.

HENRY F. BRIGGS.

Witness:
L. M. NORTHROP.
B. M. HEMANS.

Ex'd: E. L. L.; P. A. G.

(Here follows diagram marked p. 114.)

115 THE HOTCHKISS & MERRIMAN MANUFACTURING COMPANY, assignees of Julius Hotchkiss.

Improvement in Suspenders.

Specification forming part of Letters Patent No. 8606. Filed December 23, 1851.

To all whom it may concern:

Be it known that I, Julius Hotchkiss, of Waterbury, in the county of New Haven and State of Connecticut, have invented a new and useful improvement in the art of manufacturing suspenders; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings and to the figures of reference marked thereon:

My improvement consists in fastening the different pieces or parts of the suspender together wherever a permanent fastening is necessary by means of a metallic clasp or clamp of peculiar construction and made and applied in the following manner:

I first take a slip of metal of suitable size, of which the drawing marked "No. 1" may serve as an illustration (but which may be varied in width, length, and thickness, according to the width and size of the straps or pieces which are to be fastened together), and by any suitable machinery I bend up the two ends. (See drawing marked "No. 2.")

I then place the ends which I wish to fasten together of the two parts or pieces of the suspender within the bend thus formed, lapping or laying one of the pieces upon the other (see drawing marked "No. 3"). and then by means of a press or punch of suitable construction I curve inward the two ends of the slip of metal thus bent and bring them down firmly over and upon the ends of the pieces to be fastened together (see drawings marked "No. 4," "No. 5," "No. 6," representing parts of different forms fastened in this manner).

I use this clasp or clamp principally in fastening the pieces
116 of leather or cord in which or from which the button-holes of the suspender are formed to the other parts of the suspender, and when thus used its advantages are:

First. That it is a stronger fastening than the common method of sewing.

Second. That it enables me to use heavier single leather or cord for the button-holes without giving the article a clumsy appearance.

Third. It enables me to use small scraps or pieces of buckskin or other material left by manufacturers of gloves, mittens, and other leather goods (which have heretofore been useless to suspender makers, owing to the difficulty of making a neat and substantial connection with a single thickness of leather), thus enabling me to afford a cheaper article and of a better quality than by the ordinary method.

What I claim as my invention and desire to secure by letters patent is the fastening of those different parts of a suspender to each other which require a permanent fastening by a metallic clasp or clamp, substantially in the manner and for the purposes hereinbefore described.

JULIUS HOTCHKISS.

Witnesses:
FREDERICK J. KINGSBURY.
JOHN DEACON.

Ex'd: G. W.; K. E.

(Here follows diagram marked p. 117.)

118 JULIUS HOTCHKISS.

Improvement in Manufacturing Suspender Ends.

Specification forming part of Letters Patent No. 11160, dated June 27, 1854.

To all whom it may concern:

Be it known that I, Julius Hotchkiss, of Waterbury, in the county of New Haven and State of Connecticut, have invented a new and useful improvement in suspender ends; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings and to the letters of reference marked thereon.

J. Hotchkiss. 117

Suspenders.

No. 8606. Patented Dec. 23. 1851.

Fig. 1.

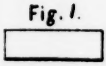


Fig. 2.

Fig. 4.

Fig. 3.

Fig. 5.

Fig. 6.

No. 177.
Sheffield
N. Mfg Co. } p. 117

The nature of my invention consists in attaching the straps to each end of the buckle by a double connection, whereby a self-adjusting action is obtained that adapts itself to the position of the body.

To enable others skilled in the art to make and use my invention I will proceed to describe its construction and operation: In constructing the suspender strap I take two pieces of narrow web, half inch wide (but may be of different width) and of the length necessary for the strap required. These two pieces of web I place side by side, and with needle and thread neatly and firmly sew the selvage edges together from one of the ends a sufficient distance to make the union firm and strong; then I leave a space or opening of sufficient length for the button-hole or loop required, and then sew the selvage edges of the two pieces of web together again for half an inch or more, thus forming the button-hole or loop in one end of the strap, as shown in the accompanying drawing at A, and the button-hole or loop in the other end of the strap, after being attached to the buckle as hereinafter described, is formed in the same manner by sewing the other ends of the two pieces of the web together, as shown in the drawing at B.

In constructing the buckle to which my invention is to be applied I form the bar of the buckle with a flat lip behind the tongues,
119 in each end of which I cut out a strip or opening in length equal to the width of the web of the straps and of sufficient width to receive the web of the straps and allow it to play easily therein, as shown in the drawing at C C.

If preferred, instead of the lip on the bar of the buckle with the openings to receive the straps as above described, the bar of the buckle may be formed in the usual manner with wire loops of the required form attached to the bar of the buckle behind the tongues to receive the straps instead of the lip with the opening as above described.

After the button-hole or loop is formed in one end of the two pieces of web, as shown in the drawing at A, to attach the strap to the buckle, I take the left-hand strip of web and pass it through the front side of the left-hand opening in the bar of the buckle, as shown in the drawing at D, and the right-hand strip of web through the back side of the right-hand opening in the bar of the buckle, as shown in the drawing at E, and then bring the ends of the strips of web together and form the button-hole or loop in that end of the strap by sewing together as in drawing at B, which completes and forms the "suspender end," according to my invention, the whole, when completed, being as shown by the drawing marked D, E, A, B.

The web straps, with the button-holes or loops formed therein as above described, can be applied to the various kinds of suspender buckles and clasps in the same manner as to the tongue buckle, as above described.

What I claim as my invention and desire to secure by letters patent is—

The double attachment or connection of the straps with the buckle, substantially as above described and set forth.

JULIUS HOTCHKISS.

Witnesses:
THEODORE S. BUEL.
NORLAND J. BUEL.

Ex'd: G. W; K. E.

(Here follows diagram marked p. 120.)

122 UNITED STATES PATENT OFFICE.

DAVID W. CANFIELD, of New York, N. Y.

Improvement in Combined Shoulder-Brace and Suspender.

Specification forming part of Letters Patent No. 37149, dated December 16, 1862.

To all whom it may concern:

Be it known that I, David W. Canfield, of No. 486 Broadway, in the city, county, and State of New York, have invented a new and useful improvement in the combined shoulder-brace and suspender; and I do hereby declare that the following is a full, clear, and exact description of the same, reference being had to the accompanying drawings, forming part of this specification, in which—

(Here follows diagram marked p. 121.)

Figure 1 is a plan view of a shoulder-brace and suspender with my improvement, representing them spread out to illustrate the invention. Figs. 2 and 3 are respectively a front and a back view, showing the application of the invention.

Similar letters of reference indicate corresponding parts in the several figures.

This invention consists in a novel mode of arranging and combining the several straps and pieces of which the combined shoulder-brace and suspender is composed, whereby it is made to serve as an effective shoulder-brace and to support the pantaloons or other garment with greater ease and comfort to the wearer than with the arrangements of parts in common use, and is rendered more perfectly adjustable.

To enable others to construct and apply my invention, I will proceed to describe its construction and operation.

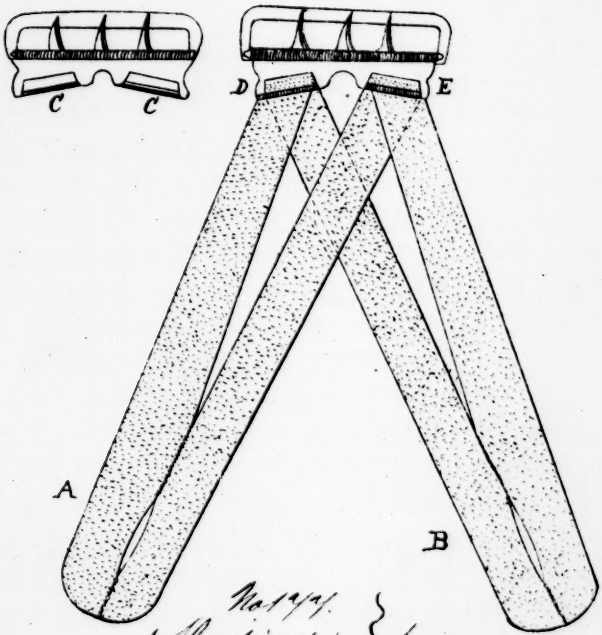
A A are the shoulder-straps, each made of a separate piece of elastic webbing, and having their several ends united by sewing together, as shown at *e f* in Fig. 1, and having their union strengthened by sewing onto them a piece of stout cloth, B, which comes in the middle of the back when the article is in wear, as shown in Fig. 2.

J. Hotchkiss.

120

Suspenders.

No 11160 Patented Jun. 27, 1854



No 1 of 4
(Sheafpiece)
N. Haf & Cedar
} fr. 120

D. W. Canfield.

Suspenders.

No 37149 Patented Dec. 16, 1862.

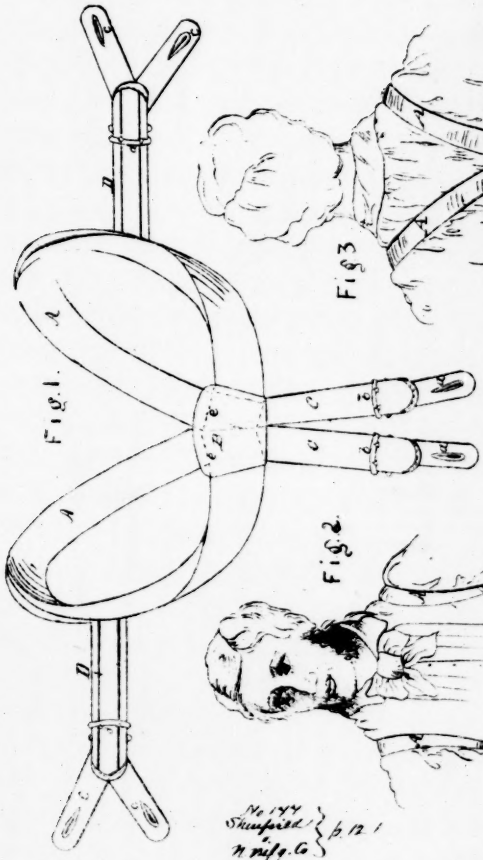


Fig 1.

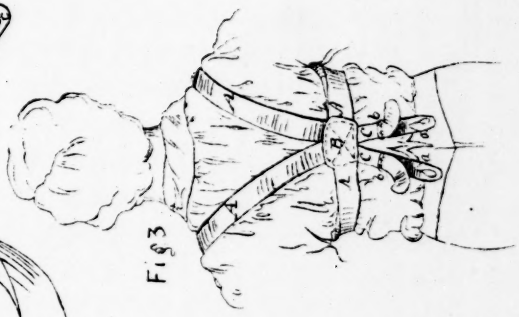


Fig 3

Fig 2

No 177 Shumpike & Nisley Co. p. 121 et al

Witnesses
Timothy Shumpike
W. S. Partridge

Inventor
D. W. Canfield

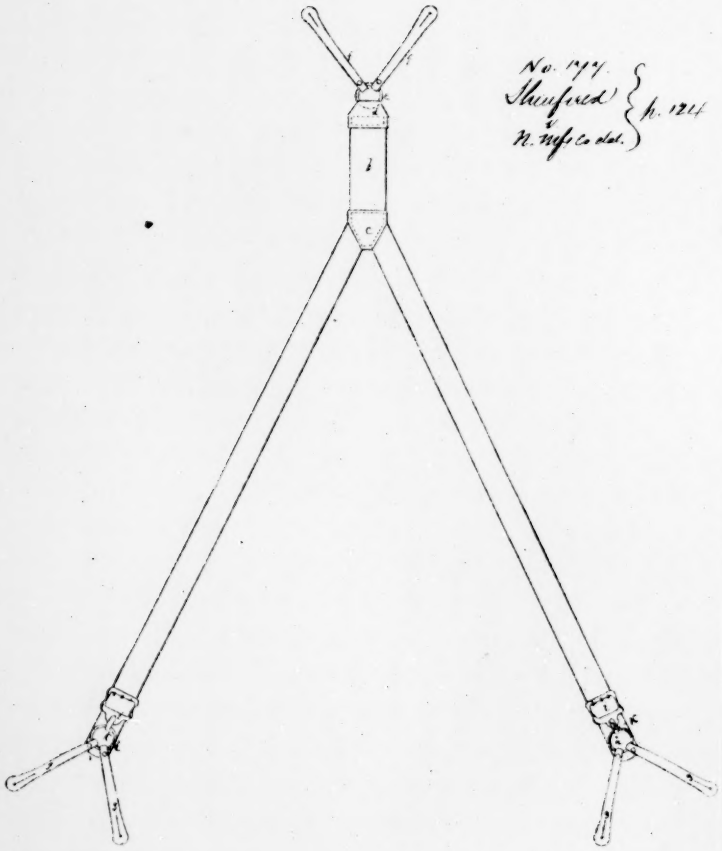
A. W. Upton

Suspenders

124

No 47348

Patented Apl. 18 1865



No. 177 Illustrated in N. Mfr's Cat. } p. 1214

Witnesses:

Geo. B. Briggs

Fred A. Brooks

Inventor:

A. W. Upton

by his attorney

P. H. Eddy

C C are the back-straps, sewed to the lower parts of A A, close to where the latter are joined together, and having their union with A A further strengthened by stitching to the piece B. These straps serve at the same time to suspend the back park of the garment and to keep the back parts of the shoulder-straps in place. They are furnished with loops or end pieces, *a a*, which are adjustable by means of buckles, *b b*.

D D are the front suspending-straps, sewed to the front parts of the shoulder-straps in a suitable position for the suspension of the front portion of the garment, and furnished with double end pieces, *c c*, adjustable by buckles *d d* to vary their effective length.

The straps C C, like the shoulder-straps, are made of elastic webbing, but D D should be inelastic or but slightly elastic.

What I claim as my invention and desire to secure by letters patent is—

The combined shoulder-brace and suspender, composed of the shoulder-straps A A, back straps, C C, front straps, D D, and end pieces, *a a* and *c c*, the whole arranged and combined as herein set forth.

D. W. CANFIELD.

Witnesses:
TIMOTHY SHINE.
M. S. PARTRIDGE.

123 UNITED STATES PATENT OFFICE.

ALBERT W. UPTON, of Lowell, Massachusetts.

Improvement in Suspenders.

Specification forming part of Letters Patent No. 47348, dated April 18, 1865.

To all whom it may concern:

Be it known that I, Albert W. Upton, of Lowell, in the county of Middlesex and State of Massachusetts, having invented a new and useful improvement in pantaloon-suspenders; and I do hereby declare the same to be fully described in the following specification and represented in the accompanying drawing.

The main novel feature of this suspender, by which it may be distinguished from others in use, consists in the union of two shoulder-straps with the two back buttoning-straps.

In the drawing,

(Here follows diagram marked p. 124.)

the two shoulder-straps are shown at *a a* as connected together and to the elastic dorsal-strap *b* by a connection, *c*, which is composed of one or more pieces of leather sewed to each of the said straps *a a b*. The lower end of the elastic dorsal-strap terminates

in a leather loop, *d*, from which a ring, *e*, is suspended. The two back buttoning-straps, *f f*, are hung from the said ring. The two front buttoning-straps of each suspender-strap are shown at *g g* as depending from a ring, *h*, supported by a hook, *k*, from a buckle, *i*, through which the shoulder-strap is carried.

Suspenders so made are much easier to the wearer and support the pantaloons to better advantage and wear longer than many other kinds of suspenders.

I do not claim a pantaloon-suspender having its shoulder-strap in one piece of webbing and connected to the button-straps by means of a metallic bow or double eye and a simple inelastic band or strip of leather.

I claim—

The improved suspenders, as made with the single elastic dorsal-strap *b*, arranged and combined with the shoulder and back buttoning-straps, substantially in manner and by means as specified, and as represented.

ALBERT W. UPTON.

Witnesses:
G. F. RICHARDSON.
E. O. BLAKE.

125 UNITED STATES PATENT OFFICE.

THOMAS JEFFERSON FLAGG, of New York, N. Y.

Improvement in Suspenders.

Specification forming part of Letters Patent No. 144,970, dated November 25, 1873; application filed July 28, 1873.

To all whom it may concern:

Be it known that I, Thomas J. Flagg, of the city, county, and State of New York, have made an invention of a new and useful improvement in suspenders; and that the following is a full, clear, and exact description and specification of the same.

The object of my invention is to produce strong ends of suspenders having thin woven-cloth surfaces, ornamental in appearance, and durable, particularly at the button-holes, which are greatly liable to fray with use. To this end my invention consists of a suspender-end having a strong core of leather, or similar material, a facing of thin woven cloth, a backing of kid, or similar material, and the button-hole overlaid with kid, the whole combined in such manner that the raw external edge of the woven face is covered with backing, and the raw edge of the woven face at the button-hole is concealed and protected from wear by the kid button-hole lining, while the core is concealed from view, and may therefore be made of low-priced, strong leather, which would impair the appearance and sale of the article if it were exposed to view, and might soil the clothing.

My invention may be fully understood by reference to the accom-

T. J. FLAGG.

Suspenders.

126

No. 144,970.

Patented Nov. 25, 1873.

No. 177. Mansfield N. Mfg. Co. Cadet } p. 126

Fig. 1.

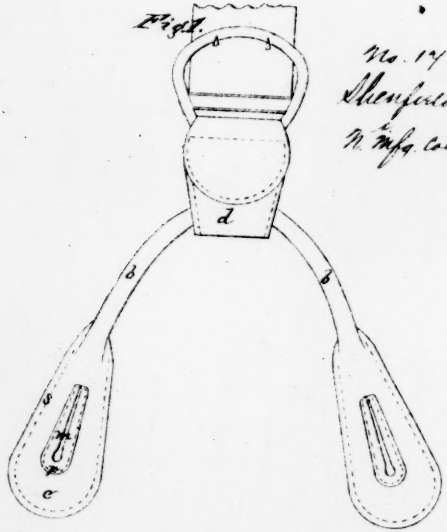


Fig. 2.

Fig. 4.

Fig. 5.

Fig. 3.

Witnesses

E. H. Bryant

W. L. Bemus

Inventor

T. J. Flagg

by his Att'y

C. L. Kenwick

panying drawings, representing an example of suspender-ends embodying it, and by the following description.

(Here follows diagram marked p. 126.)

In said drawings, figure 1 represents a view of a pair of suspender-ends complete, and the loop by which they are connected with a buckle. Fig. 2 represents a face view of part of the ends before the body is rounded. Fig. 3 represents an edge view of the said loop. Figs. 4 and 5 represent sections of the suspender-end greatly enlarged.

In order to construct such suspender-ends, a flat cone, *a*, (see Fig. 4,) of strong leather is cut into the required form by suitable dies. To the face side of this core is applied a piece of the woven-cloth face *c*, also cut into shape, but of larger size than the core, so that the external raw edges *e e* of the cloth can be lapped around the edge of the core. There is also applied upon the cloth a piece, *m*, of kid, about twice as long as the button-hole, and with its flesh side outward. The three parts thus described are sewed together around the button-hole by a line of stitching, *i*, Fig. 4. Then the edges of the piece of kid are turned in through the button-hole and pasted down to the rear side of the core, so as to reverse the exposed face of the kid and bring its grain side outward. The external edges of the woven cloth are lapped over the outer edge of the core, and secured to its back by paste, and the kid backing *w* is pasted upon the back of the suspender-end. All the four parts are then securely fastened by a line of stitching, *r*, round the button-hole, and a line of stitching, *s*, along the edge of the article. In order to equalize the strain upon the ends of a pair, I round the connecting portion *b* by bringing its two edges together and securing them to each other by stitching. I also inclose them in a loop, *d*, by means of which the pair is connected with the buckle of the front end of the shoulder-strap, or with the rear end of the shoulder-strap. This loop is made by preference of a core of strong leather covered with cloth and lined with kid, and its form is adapted to its position in the suspenders. It receives the rounded connecting portion of the pair of ends, and permits them to adjust themselves to the strain by the movement of the said rounded portion in the loop.

I claim as my invention—

The suspender-end before described, consisting of the combination of the concealed core *a*, the cloth facing *c*, turned over the edge of the core, the button-hole lining *m*, protecting and concealing the edges of the cloth face and the core at the button-hole, and the backing *w*, covering and concealing the raw turned-in edge of the face, substantially as before set forth.

Witness my hand this 22d day of July, A. D. 1873.

THOS. J. FLAGG.

Witnesses:

R. S. HAYWARD.
SIM D. CONKLIN.

127 NEW YORK, *May* 5, 1886.

Present: Mr. Dickerson, for complainant; Mr. Jenner, for defendant.

GRANVILLE H. LEONARD, a witness called on behalf of the defendant, being duly sworn, and examined by Mr. JENNER:

1 Q. What is your name, age, residence, and occupation?

A. Granville H. Leonard; 53; East Hampton, Massachusetts; occupation, manufacturer of suspenders.

2 Q. Are you connected in any way with The Nashawannuck Manufacturing Company, defendant in this suit, and how long have you been connected with them, and in what capacity?

A. I am connected with them as a stockholder, clerk of the corporation, a member of the board of directors, and manufacturing agent. I have been connected with them in various capacities since 1851, have been a director since about 1872, and have been superintendent of manufacture for twenty years or more. I am not positive as to exact dates, but the dates I have given are approximately correct.

3 Q. Will you produce some specimens of suspenders which were made by your company and which you were then putting upon the market in 1875?

A. Not having previous notice that I was to testify in this case before leaving home, am unable to make a very full exhibit of such styles. There were a great variety of styles in use at that time, of which Leonard Exhibit No. 1 — made with leather tips both on straps and at the back ends with web connecting piece for straps. This was one of the cheaper classes or grades of goods made. Leonard Exhibit No. 2 represents more expensive variety. These were made with a leather-back button-hole or a button-hole worked with a needle, silk or cotton, and then, for front straps, doubled straps with woven button-holes, known as "Cantab" ends, were used with what were termed roller buckles. These were also made in
128 the same form with single button-hole straps attached to the buckle with a leather, termed shoulder piece, of great variety of forms, and also straps of the same kind were stitched into the loop of the buckle directly without the intervening leather piece. Leonard Exhibit No. 4 is a sample in connection with the flat straps and woven button-hole. Exhibit No. 3 represents another style of woven button-hole straps applied differently, but substantially the same, on a medium quality of goods. Leonard Exhibit No. 5 represents a style of brace very largely used at this time. These were made, as shown by the No. 5, with "Cantab" ends, and also with single web ends with leather connecting pieces or shoulders; also with leather straps attached to the buckle with an eyelet. Exhibit No. 6 represents what are now termed a rolling brace. These were made with leathers stitched to the buckle, as shown by this exhibit; also were secured to the buckle by eyelets passing through the shoulder piece. Leonard Exhibit No. 7 shows what was termed an English brace, known to the trade as such. These

were ornamented with felt or cloth in fancy colorings, as shown by exhibit, or made with various kinds and colors, fancy and plain leather. These were made in great variety of shapes, stitched with silk or cotton. Leonard Exhibit No. 8 represents imperfectly what was termed the "Guyot" brace, and known to the trade as such. Leonard Exhibit No. 9 represents one of the cheaper and very largely used varieties of English braces.

I have presented only a few of the many varieties and styles of braces then made. There were large numbers of braces used known as the "Grecian" brace, made with long tapering leather front straps, with leather button-hole straps attached to buckles made to move up and down in the leather front strap to increase or diminish the length. Most or all of the before-named styles were made previous to and since 1875. It would be impossible for me to state exactly which were so used without examination of the records.

Question and answer objected to as immaterial and not surrebuttal.

129 4 Q. State, according to your recollection, which styles of the exhibits produced by you have been made by your company several years before the year 1875 and several years since.

A. Nos. 1, 2, 6, 9, 10, 5, 8 were certainly made before and since that date, and Exhibits No. 4 and No. 1 are especially old methods of construction.

Question and answer objected to as immaterial and not surrebuttal.

130 NEW YORK, *May 6th*, 1886.

WILLIAM W. CORNISH, a witness called on behalf of the defendant, and duly sworn, and examined by Mr. JENNER:

1 Q. What is your name, age, residence, and occupation?

A. William W. Cornish; age, 34; 707 Ninth avenue; salesman, notion department of H. B. Claflin, and have full charge of the suspender stock.

2 Q. How long have you had to do with the suspender stock of H. B. Claflin & Co. and what has been the nature of your relations with that department of the business from the commencement down to the present? Please answer fully.

A. Well, I have had the arrangement and the placing of the goods—that is, the marking and tagging of the goods—since '71; as far as I remember, '71; since I think it was the spring of '79 or fall of '79, I am not sure which, I went with Mr. Irish where he purchased the suspenders, and went with him from that time till fall of 1884. I don't remember whether he *was* or Mr. Randolph or Mr. Irish purchased them in the spring of 1885. Then in the fall of 1885 Mr. George E. Brightson became the head of the notion department. Then I purchased suspenders from the different suspender companies in the fall of 1885 and spring of 1886, with one exception, when Mr. Brightson purchased in the fall of '85 and spring of '86 from the Nashawannuck Manufacturing Company.

3 Q. You spoke of tagging or marking the goods; what did you mean by that?

A. Well, as is customary, the suspenders of the last few years are placed on the racks, and we place a tag on them denoting the number and the price of the goods.

4 Q. Did you have anything to do with fixing the price of goods?

A. Well, more recently they were marked at a certain percentage.

131 5 Q. Did you have anything to do with that?

A. The head of the notion department, of which the suspender department is a branch.

6 Q. What I want to get at is whether or not you had anything to do with fixing the prices of the suspenders; and, if so, what had you to do with that?

A. Well, I bought suspenders and brought them in the house and marked them what I thought was right.

7 Q. When did H. B. Claflin & Company first begin to deal in suspenders provided with braided ends, and in what year was it? And I mean by braided ends, ends like "Complainant's Exhibit Shenfield End of 1875" and "Defendants' Exhibit Looped Braid End of Shenfield, No. 2."

Objected to as immaterial and not surrebuttal.

A. In spring of '79.

8 Q. From whom were the suspenders provided with such ends purchased?

Objected to as immaterial and not surrebuttal.

A. The National Suspender Company.

9 Q. What has been the greatest proportion in any year of the dealings of H. B. Claflin & Co. in suspenders provided with braided ends like the said exhibits or either of them as compared with the entire trade of that house for suspenders in the same year? I refer to proportion in number of dozens.

Same objection as incompetent and secondary, the facts inquired about being primarily shown by the account books of H. B. Claflin & Company.

A. I should think about 10 per cent.

10 Q. What was the proportion for last year?

Same objection.

A. About 5 per cent.

132 11 Q. And what is the proportion for this year down to date?

Same objection.

A. About 1 per cent.

Cross-examination *de bene esse*, subjected to objections taken to the direct:

12 X Q. Prior to last fall did you have any authority either in regard to the purchase or sale of suspenders?

A. I had no authority to make terms previous to the fall of 1885.

13 X Q. And at the present time your authority to purchase is subject to the head of your department, is it not?

A. I don't know how to answer that question.

14 X Q. What proportion in value would 10 per cent. of the number represent in the suspender business of H. B. Claflin & Company?

A. The 10 per cent. applied previous to July, 1885?

15 X Q. (Question repeated.)

A. I am unable to state what proportion.

15½ X Q. Have you any right to inspect the books of H. B. Claflin & Company?

A. No, sir; I don't think I have.

16 X Q. Did you have any authority in determining any prices previous to the fall of 1885?

A. I did not.

17 X Q. Have you any such authority now excepting merely to add the firm's per cent. of profit to the cost?

A. I use my own judgment in placing the prices of some of the goods.

18 X Q. What part of the goods?

A. Well, I mark the goods that I think right and proper—that is, all of the suspenders.

19 X Q. Is that marking done entirely under your own authority or subject to the supervision of the head of the department?

133 A. May I ask what you mean by supervision of the head of the department?

20 X Q. I mean do you fix the prices under the general instruction of the head of your department?

A. He leaves it with my discretion with what I ought to mark the goods.

21 X Q. How do you remember that it was 1879 when the firm of H. B. Claflin & Company first purchased looped braid end suspenders?

A. Mr. Irish became head of that department, and that is the first dealing we had, to my knowledge, with the National Suspender Company.

Redirect:

22 Re-D. Q. You stated that you had no right to inspect the books of H. B. Claflin & Company. Add anything to your answer that you desire.

Same objection.

A. I mean thereby the ledger or the consignment book of the department.

WILLIAM W. CORNISH.

Attest: J. H. IVES,
Notary Public and Special Examiner.

Adjourned to May 7th, 1886, at 11 o'clock.

134 NEW YORK, *May* 7, 1886.

Parties met pursuant to adjournment.

Present: Counsel as before.

MORTON D. BOGUE, a witness produced on behalf of the defendants, being duly sworn and examined, testifies as follows:

1 Q. What is your name, age, residence, and occupation?

A. Morton D. Bogue; residence, Brooklyn; age, 36 years; occupation, Brooklyn.

2 Q. Are you connected with the firm of Tefft, Weller & Co., of this city?

A. As a buyer; yes, sir.

3 Q. How long have you been connected with them?

A. Since 1877.

4 Q. Has that firm since you have been connected with them dealt in suspenders?

A. Yes, sir.

5 Q. What acquaintance and familiarity have you acquired with the suspender trade?

A. I have acquired considerable from buying and selling them from the different manufacturers of the goods here in New York, as well as outside of New York.

6 Q. Prior to your connection with Tefft, Weller & Co. with what firm were you connected?

A. Bartlett, Reed & Co.

7 Q. Did they deal in suspenders?

A. They did, and I was with them in the same capacity.

8 Q. Does the firm of Tefft, Weller & Co. deal in suspenders, and have they dealt in suspenders since your connection with them to a considerable extent?

A. They have.

9 Q. Do you remember the introduction of the suspenders provided with braided ends that were introduced by the National Suspender Company?

A. I recollect the introduction, though not the time of the introduction.

135 10 Q. Can you state about what year it was?

A. I could not, no; I presume within a radius of ten or twelve years, though I could not tell when.

11 Q. Taking the suspenders which had been bought and sold by the firm of Tefft, Weller & Co. in any one year since your connection with that firm, what has been the greatest proportion in any year of suspenders provided with ends like "Complainant's Exhibit Shenfield End of 1875" or the "Defendants' Exhibit Loop Braided End of Shenfield, No. 2"?

Objected to as immaterial and incompetent, not surrebuttal.

By Mr. JENNER: I mean the proportion in number and amount.

Same objection.

A. Dollars and cents or dozens. If you confine us to one end or the other I could not say anything. We have all kinds of braided ends. If you say the number of dozens in proportion to the amount of dozens sold of braided ends of various kinds, maybe one per cent.; if dollars and cents, at times five per cent.

12 Q. In your last answer, you included braided ends of all kinds?

Same objection.

A. Yes, sir; various kinds.

13 Q. Of the number of suspenders sold last year, what proportion were braided ends of all kinds, in number and value?

Same objection.

A. That is hard to approximate; probably in value maybe five per cent. during the fall season; spring seasons I could not say. I gave it no attention; gave it very little attention. In the fall I approximate from memory the number of dozens; maybe not to exceed one per cent., I should assume, though it is an approximation simply.

136 14 Q. Taking the sales of the present season of 1886, what are the proportions?

Same objection.

A. Dozens or value?

15 Q. Both?

Same objection.

A. I should think of value not to exceed two per cent. of dozens. Probably one-half of one per cent. would cover it. I should assume so, though it is hard to answer that question definitely for the simple reason we buy and sell goods so rapidly that suspenders are sold without any attention given to the end one way or the other.

16 Q. You have spoken of braided ends of various kinds. Will you please describe generally the method of forming the end of these ends to which you have referred in your prior answer?

Same objection.

A. Well, we have had ends like this (referring to "Complainant's Exhibit Loop Braided End of Shenfield, 1875") and like the No. 2 that this gentleman has. (Witness refers to "Defendants' Exhibit Loop Braided End of Shenfield, No. 2.") We have had a braided end that was a solid piece of braid with a button-hole in the end. (Witness here refers to "Defendants' Exhibit Betts' End.") We have had braided ends made of tubular cord similar to this. It is crossed.

17 Q. Any others?

Same objection.

A. We have had braided ends that were made of pieces like this attached together with a metal clasp above the button-hole like this. (Witness refers to "Complainant's Exhibit Loop Braid End Shenfield of 1875.")

137 18 Q. Any others?

Same objection.

A. I do not recall any others.

Cross-examination by Mr. DICKERSON, Jr.:

19 X Q. Your house is a general dry-goods house rather than a furnishing-goods house, is it not?

A. Yes, sir.

20 X Q. And your class of trade is generally in comparatively low-priced goods, is it not, as compared with the higher priced goods sold by the furnishing-goods houses?

A. I presume that has been the case.

Redirect examination:

21 Re-D. Q. There is a notion department in the house of Tefft, Weller & Co.?

Same objection as to Question 11.

A. There is, certainly.

22 Re-D. Q. And that is an extensive branch of the business?

A. It is; yes, sir.

Signature waived

138 EDWARD D. CANDEE, a witness produced on behalf of the defendants, being duly sworn and examined, testifies as follows:

1 Q. What is your name, age, residence, and occupation?

A. Edward D. Candee; aged 37 years; residence, Brooklyn, Kings county, State of New York; occupation, I am manager of the Nashawannuck M'f'g Company, in New York.

2 Q. How long have you been connected with the defendants, The Nashawannuck M'f'g Company, and in what capacity during the period of your connection with them?

A. Since January, 1870; as salesman and manager of their New York affairs.

3 Q. How long have you been manager?

A. Since 1876.

4 Q. In your office of manager what have you had to do with selling suspenders?

A. Well, I have had exclusive charge of that department, of supervising every sale; every sale that is made is, of course, approved by me, the question of credit, etc.

5 Q. Is it a part of your regular duties also to have to do with the fixing of prices?

A. Oh, yes; we settle that, and, of course, direct about the manufacture; the question of what goods are to be made and what are not; what are to be continued and what are to be dropped.

6 Q. Do you also yourself personally make sales?

A. Yes; frequently.

139 16 Q. When did your company, the Nashawannuck Manufacturing Company, commence selling suspenders with silk braided ends?

Same objection.

A. 1883.

17 Q. How were the ends formed which you sold first?

Same objection.

A. The first ends we had were formed by a piece of tubular braid, containing a piece of elastic running the whole length of the braid and fastened to a loop, the other end being fastened over the ring of the suspender end—the attaching piece. The place where the loop joined the tubular braid was covered with a clamp—metal clamp.

18 Q. Have you got a specimen of that end? If so, please produce it.

Same objection.

A. This is it.

Witness produces specimen, and it is marked in evidence "Defendants' Exhibit Candee No. 1, J. H. I., sp'l ex., May 7, 1886."

Same objection.

19 Q. What was the next form of braided end which you sold?

A. We afterwards had several kinds. I might mention here that we had about 20 dozen Betts' braided ends some time during 1883, and afterwards these affairs here came in. In the years 1883 and 1884 we sold braided ends, of which the three I now produce are specimens.

140 The ends referred to by the witness are offered in evidence, and the same are marked, respectively, "Defendants' Exhibits Candee 2, 3, and 4, J. H. I., sp'l ex., May 7, 1886."

In December, 1883, we took on this end known as the Marcus end.

The end referred to by the witness is offered in evidence, and the same is marked "Defendants' Exhibit Candee No. 5, J. H. I., sp'l ex., May 7, 1886."

23 Q. Give some idea of the magnitude of the trade of the Nashawannuck Manufacturing Company in suspenders as compared with other houses in the same line.

Same objection.

A. We believe we sell more suspenders than any other people in the business.

24 Q. Mr. Jerome Bernheimer produced a statement of the sales of braided-end suspenders by the National Suspender Com-
141 pany from 1875 down to the 19th of April, 1886, and according to that statement the National Suspender Company had sold from the 1st of January, 1886, down to the 19th of April about

19,000 dozen suspenders with braided ends. As the account is not here and I have no copy of it I may not be exact, but according to my recollection that was about the figure. Are you startled by those figures?

Same objection; also as absurd.

A. I was surprised at the quantity not being larger. I remember that we received in one week in January, I think, about 18,000 dozen suspenders.

25 Q. Have you recently made any sale of suspenders of considerable magnitude?

Objected to as immaterial and not surrebuttal.

A. I sold on Wednesday over 5,100 dozen to one man.

26 Q. What were the sales of suspenders in dozens by your company during the year 1885? Of course I mean suspenders of all kinds.

Same objection.

A. We sold in 1885 over 500,000 dozen.

27 Q. And of those what proportion were suspenders provided with braided ends?

Same objection.

A. Less than one per cent.

28 Q. In 1884 what were the aggregate of sales by your company of suspenders of all kinds?

Same objection.

A. Over 400,000.

142 29 Q. And of those what proportion were provided with braided ends?

Same objection.

A. Less then three per cent.

30 Q. For this year, 1886, from the 1st of January down to the 19th of April, 1886, what had been the aggregate of sales of suspenders of all kinds?

Same objection.

A. Over 200,000 dozen.

31 Q. Have you ever sold any suspenders provided with ends like "Complainant's Exhibit Shenfield *of 1875 of* Loop Braid, End of 1875?"

Same objection.

A. No, sir.

32 Q. What is your opinion of that end?

Same objection.

A. Well, we never thought much of this end, for the reason that this affair rips, pulls apart; did not consider it worth what it cost.

33 Q. Did you ever sell any suspenders provided with ends like the "Exhibit Shenfield No. 2?"

Same objection.

A. No, sir.

34 Q. Since you have been selling suspenders with braided ends have you made any effort to sell them?

Same objection.

A. Why, certainly; sold all we could.

143 35 Q. About how many jobbing houses are there in the United States which deal in suspenders?

Same objection.

A. I do not know exactly. I should say near 2,000.

36 Q. Now, Mr. Candee, won't you give some idea of the course of trade in suspenders with respect to the introduction of novelties and how that trade proceeds?

Same objection.

A. Well, sir, this is a fancy-goods business. A thing that is good to-day, at this season, may be flat and a failure next season. Our experience verifies this. In the Russian end, of which we were sole licensees under Fisk, Clark & Flagg patents—we had it and it was largely sold for, say, two years, and although infringements occurred it stopped, fell flat. (Witness refers to Exhibit No. 7.) Subsequently a flannel imitation was exceedingly active and then stopped; not a dozen sold to-day. The thing is not mentioned. What is known as the "pulley end" was very active, in high demand, and the trade to-day is almost nothing.

Witness refers to the end which is offered in evidence, and the same is marked "Defendants' Exhibit Candee Pulley End, J. H. I., sp'l ex., May 7, 1886."

What we call the "English trim leather ends," like this. This is what I refer to as the leather end English trim (witness refers to "Exhibit Leonard No. 9"), of which one time we certainly sold 75 per cent. of our output. Not one per cent. of this class are sold to-day in men's suspenders. Here is a style of trim that has obtained for years before I came in the business. (Witness refers to "Defendants' Exhibit Leonard No. 4.") We have sold this at various times, but latterly this special trimming has not been so active.

144 Here is another ("Defendants' Exhibit Leonard No. 2"). The style of end or strap is that of which we at one time sold, say, 25 per cent., while to-day it is not one per cent. Here is a suspender that we call a "gentleman's," using that to distinguish the trim, of which we sell more dozens to-day than any made. Witness refers to "Defendants' Exhibit Leonard No. 3.") This rolled leather, of which we at one time sold very largely, I do not think is sold by any one outside of our own house to any degree at all. Possibly we sell to-day five per cent. of it. (Witness refers to "Defendants' Exhibit

Leonard No. 6.") Here is a trimming, "Defendants' Exhibit Leonard No. 8," of which within ten years we have been oversold at times 3,000 dozen—possibly 5,000 dozen. We sell it in a limited way—say not over 2½ per cent. In these various trimmings I presume we have had as much flurry and rush over the "Russian" end and this cord pulley, which, as I understand it, was invented by Altman. I make this remark to illustrate what I said at the beginning—that a peculiar trimming may be active to-day and within twelve months or so flat. This is our experience all through our line.

37 Q. How many styles is your company dealing in now?

Same objection.

A. About 600.

38 Q. And these differed from each other how, in what respects? Give some general idea.

Same objection.

A. I should say that our whole assortment of, say, about 600 styles was divided into ten or twelve varieties of trimming.

(Here follows diagram marked p. 145.)

146 *Extract from Harper's Bazar of July 22d, 1871, page 452.*

Fig. 7 shows a section of suspenders worked with gray linen twist and red worsted, together with a back button-hole strap. For each half of the suspenders and the button-hole straps work with coarse gray linen a ch. foundation a yard long, and on this work as follows: 1st round—10 ch.; with this pass over 9 foundation st. 6 sc. on the following six foundation st., now always alternately 1 ch., 1 dc.; pass over 1 foundation st. with the latter. On the last 20 foundation st. work 1 ch.; pass over 1 foundation st. 5 sc.; on the following 5 foundation st. 9 ch.; pass over 9 foundation st., and on the last 5 foundation st. work 5 sc.; now work 19 ch., and fasten with 1 sl. to the last foundation st. on the other side of it. The round work on the foundation st. forms the middle strip of the suspenders. All around this strip work 4 rounds sc. with gray linen thread, widening at the end of the button-holes in such manner that the work neither draws nor gathers. Around the band thus far completed (not including the button-holes) work 1 round of sc. with red worsted; at the ends work the sc. on the still free upper vein of the horizontal row of st. (see illustration), always working 2 sc. on one vein. Then work one round of sc. with gray linen thread and one picot round with red worsted. For the picot round work 1 sc. on each st.
147 of the preceding round; after each second following sc. 1 p., consisting of 3 ch. and 1 sc. in the first of these. Ornament the band thus far completed along the middle with leaflets of red worsted. To do this hold the back button-hole strap between the thumb and forefinger of the left hand in such a manner that the end is turned downward. Then work the leaflets of the right half of the band as follows: 1 sc. on the first dc. above the button-hole

Extract from Harper's Bazaar, of July 22d, 1871,

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Fig. 7.—Section of Crochet Suspenders.

Full Size.

strap; 6 ch. 1 sl. on the fourth sc. (count from the red row of st. worked on the end of the band) of the 3d round worked on the open work middle strip, inserting the needle under the still free upper vein of the sc. (As the band is held crosswise this vein has a vertical position.) Now work 6 sc. on the 6 ch. previously worked, *1 sc. on the following dc., 6 ch. 1 sc. on the fourth following sl. of the 3d round above referred to, 6 sc. on the 6 ch., and repeat from*. After completing the last leaflet on the other end of the band work 1 sc. on the following dc., 2 ch. 2 sc. on the following (last) free dc. of the middle strip. Take the front button-hole strap between the thumb and forefinger, so that the end of the strap is turned downwards, and crochet the leaflets of the other half of the band as follows: 2 ch. 1 sc. on the following dc., on which 1 sc. has already been worked, 6 ch. 1 sl. on the fourth following st. of the third round of this half (inserting the needle under the free upper vein), 6 sc. on the 6 ch., 1 sc. on the following dc., 2 ch. 1 sc. on the following dc., 6 ch. 1 sl. on the fourth following st. of the third round referred to, 6 sc. on the 6 ch., and continue in this manner. In
148 the same way rifle straps, shawl straps, etc., may be worked over an interlining of twine.

149 Circuit Court of the United States, Southern District of New York.

SHENFIELD
vs.
NASHAWANNUCK MANUF'G CO. and Others. } In Equity.

SHIPMAN, *J.:*

This is a bill in equity to restrain the defendants from the infringement of letters patent No. 169,855, dated November 9, 1875, to the plaintiff for an improvement in suspender button straps. The nature and extent of the alleged improvement upon the pre-existing *cut art* described by the patentee in his specification as follows:

"Suspender ends have been made of leather, felt, jean, and similar material with the button-hole cut in the same, and in most instances the materials have been pasted together in addition to lines of stitching surrounding the button-hole. Suspender ends have also been made of a round cord, with the ends turned back and
150 fastened to form loops, but this round cord is objectionable, as it does not lie flat against the person or beneath the buttons. I make use of a suspender end made of a double flattened cord or strip bent around into a loop and united together, leaving sufficient of the loop open to form the button-hole. At the other end the suspender end is united to a buckle or clasp by a loop or folded piece of leather or other material stitched to the suspender end. The cord or strip of flat material is composed of silk, linen, cotton, worsted, or other suitable threads, or a mixture of two or more, and the threads are woven, braided, knitted, crocheted, or

otherwise laid up into the form of a complete flat cord or strip, and when the strip is folded to form the button-hole loop the seam at 3 may be made by sewing, knitting, crocheting, or otherwise, or the knitting or crocheting is commenced at the central line 3 and extended at both sides thereof and around the bottom hole by the successive ranges of interlocked loops."

151 The claims *is* for "the suspender end, made of a flat cord or strip of fibrous material, bent into a loop, laid flatwise, united at the inner edges 3, and connected to the attaching pieces *a*, as set forth."

It is stipulated by the respective counsel as follows:

"Complainant hereby admits that prior to the year 1870 there had frequently been publicly used, in the manufacture and wearing of cloaks and jackets, button loops formed of flat braid bent edgewise upon itself and sewed togther at the meeting edges, leaving an opening for the button-hole at the bend; that the ends of the braid in such button loops were permanently attached to a button or like device, which was affixed to one side of the body of the garment, and that the button loop held the garment together by being buttoned onto a button or like device, sewed to the other side of the garment, and that, when in use, the braid forming the button loop rested under the button, and that such braids were made by machinery."

152 It thus appears that, while suspender straps had been made of a round cord with the ends turned back and fastened to form loops, the patented improvement consists of a cord or strip of any fibrous material, which is made flat in any way, bent into a loop and united at the inner edges, and connected in the ordinary way with the buckle by a folded piece of leather or other material; and it further appears that button loops to fasten the two sides of a cloak or jacket together had been made in the same way, except that one end was permanently attached to a button or like device.

Whether the suspender end is, as it is called by the defendant, a double use of a well-known cloak loop, or is, as it is said to be by the plaintiff, an improvement upon a suspender end made of round cord, it equally seems to me that the improvement is devoid of invention. Shenfield *v.* Schirmer, 21 Fed. Rep., 241. To make a suspender end of flat cord in substantially the same way that suspender ends of round cord had been made, and in substantially

153 the same way in which flat button ends had been made for the purpose of fastening or securing other articles of wear-apparel than trousers, is an exercise of the ordinary skill of the housewife or the seamstress. The connection of the end to the attaching piece gives no patentable character to the loop. The attachment to the buckle is made in a customary well-known way.

As the improvement, by whomsoever made, was not "new" in a patentable sense, it is unnecessary to examine the earnestly disputed question of priority of use.

The bill is dismissed.

E. N. Dickerson and E. N. Dickerson, Jr., for plaintiff; Edmund Wetmore and Wm. A. Jenner, for defendants.

(Endorsed:) Circuit court of the United States, southern district of New York. Shenfield *vs.* Nashawanna Manu'f'g Co. and others. Decision. Shipman, J. U. S. circuit court. Filed June 15, 1886. Timothy Griffith, clerk.

154 At a stated term of the circuit court of the United States of America for the southern district of New York, held at the United States court-rooms, in the post-office building, in the city of New York, on the 15th day of June, 1886, as of the April term.

Present: Honorable Nathaniel Shipman, judge.

ABRAHAM STENFIELD, Complainant,
vs.
NASHAWANNUCK MANUFACTURING COMPANY, Defendant.

This cause having come on to be heard upon the bill of complaint herein, the answer thereto of the defendant, The Nashawannuck Manufacturing Company, the replication of the complainant to such answer, and the proof, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for the respective parties:

155 Now, therefore, on consideration thereof, it is—

Ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows:

That the complainant's said bill of complaint be, and the same hereby is, dismissed with costs to the defendant, to be taxed.

N. SHIPMAN, *Judge.*

Endorsed: U. S. circuit court, southern district of New York. Abraham Shenfield *vs.* Nashawannuck M'f'g Co. Decree. Wetmore and Jenner, sol's for defendant, 206 B'way, New York. Due and timely service of copy of within, with notice of settlement, is hereby admitted, June 15, 1886. Dickerson & Dickerson. To —— ——, att'ys: Please take notice the within is a copy of —. U. S. circuit court. Filed June 17, 1886. Timothy Griffith, clerk.

156 Circuit Court of the United States, Southern District of New York. In Equity.

ABRAHAM SHENFIELD, Compl't & App't,
vs.
NASHAWANNUCK MANUFACTURING COMPANY *et al.*, Def'ts & Appellees.

To the honorable the Supreme Court of the United States:

The appeal of Abraham Shenfield, the above-named complainant and appellant, respectfully shows that on the 10th day of October, 1884, the above-named Abraham Shenfield filed his bill of complaint in the circuit court for the southern district of New York against the above-named defendants and appellees to enjoin and restrain the said defendants and appellees and each of them from

infringing certain letters patent of the United States granted
157 to said complainant and appellant, dated the 9th day of November, 1875, and numbered 169,855, for a new and useful improvement in suspender button straps, and also praying for an account of profits and an assessment of damages arising from said infringement; that a subpœna issued out of said circuit court and was duly served on the said defendants and appellees; that the said defendants duly appeared and duly filed their answer to said bill of complaint, to which the complainant and appellant filed a general replication.

Whereupon such proceedings were had in the cause that on the 17th day of June, 1886, a final decree was made and entered in said circuit court, wherein and whereby it was, in substance, ordered, adjudged, and decreed that the said bill of complaint be dismissed with costs to the defendants, to be taxed, and that thereafter the defendants' costs were taxed at the sum of seven hundred and thirty dollars and fifty cents, and judgment entered therefor.

158 And your petitioner further shows that the said judgment and decree is, as he is advised, erroneous and ought to be reversed.

Wherefore this complainant and appellant appeals from the whole of said final decree of the said circuit court of the United States for the southern district of New York to the Supreme Court of the United States, and respectfully prays that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court and every part thereof may be reversed or such other decree made as to the said Supreme Court shall seem meet and just.

Dated New York, July 16, 1886.

ABRAHAM SHENFIELD,
By DICKERSON & DICKERSON,
Sol's for Compl't & Appellant.

159 The foregoing appeal is hereby allowed.
Dated July 16, 1886.

W. J. WALLACE.

Endorsed: "United States circuit court, so. dist. of New York, in equity. Abraham Shenfield, compl't & appellant, *vs.* Nashawannuck M'f'g Co. *et al.*, defendants and appellees. Petition of appeal and allowance thereof. Dickerson & Dickerson, compl't's solicitors, Tem-Court, New York. Service of a copy of the within petition of appeal is hereby admitted. Dated N. Y., July 16, 1886. Wetmore & Jenner, def'ts' sol's. U. S. circuit court. Filed July 16, 1886. Timothy Griffith, clerk.

160 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ABRAHAM SHENFIELD, Complainant & Appellant,
vs.
THE NASHAWANNUCK MANUFACTURING CO., CHRISTOPHER MEYER, President; Geo. H. Newman, Treasurer, and E. E. Condee, Defendants and Appellees.
} Bond for Damages and Costs.

Know all men by these presents that we, Abraham Shenfield, of the city of New York, in the State of New York, principal, and Jerome Bernheimer and Sanford Bernheimer, of the same city and State, as sureties, are held and firmly bound unto the above-named defendants in the sum of fourteen hundred and sixty dollars, to be paid to the said defendants; for the payment of which, well and truly to
161 be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas the above-named Abraham Shenfield has prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Abraham Shenfield shall prosecute his appeal to effect and answer all damages and costs if he shall fail to make his said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ABRAHAM SHENFIELD. [L. S.]
JEROME BERNHEIMER. [L. S.]
SANFORD BERNHEIMER. [L. S.]

162 Sealed and delivered and taken and acknowledged this 13th day of July, 1886, before me, as to Abraham Shenfield and Jerome Bernheimer.

JOHN A. SHIELDS,
U. S. Commissioner.

Sealed and delivered and taken and acknowledged this 15th day of July, 1886, as to Sanford Bernheimer.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss.:*

Jerome Bernheimer, of 155 West Seventy-third St., New York city, being duly sworn, deposes and says that he is a freeholder and

and householder in said city; that he is worth the sum of fourteen hundred and sixty dollars over and above all his just debts and liabilities.

JEROME BERNHEIMER.

Sworn to this 13th day of July, A. D. 1886, before me—
JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

163 Approved as to form and amount and sufficiency of the sureties.

W. J. WALLACE.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Sanford Bernheimer, of 72 West Fifty-fifth street, New York city, being duly sworn, deposes and says that he is a freeholder and householder in said city, and that he is worth the sum of fourteen hundred and sixty dollars over and above all his just debts and liabilities.

SANFORD BERNHEIMER.

Sworn to before me this 15th day of July, 1886.
JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Endorsed: Vol. —, page —. U. S. circuit court. Abraham Shenfield, compl't & appellant, *vs.* Nashawannuck M'f'g Co. *et al.*, d'f'ts and appellees. Bond on appeal. Approved as to form and
164 sufficiency. Wetmore & Jenner, sol's for defendants and appellees. Service of a copy of the bond is hereby admitted. N. Y., July 16, '86. Wetmore & Jenner, def'ts' sol's. Filed this — day of ——, 18–. U. S. circuit court. Filed July 16, 1886. Timothy Griffith, clerk.

By the Honorable William J. Wallace, one of the judges of the circuit court of the United States within and for the southern district of New York, to Nashawannuck Manufacturing Company, Christopher Meyer, president; George H. Newman, treasurer; E. E. Condee, agent:

Whereas Abraham Shenfield has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in equity, made in favor of you, the said Nashawannuck Manufacturing Company, Christopher Meyer, president; George H.
165 Newman, treasurer; E. E. Condee, agent, and has filed the security required by law—

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1886, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 16th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

W. J. WALLACE.

Endorsed: Supreme Court of the United States. Abraham Shenfield, compl't and appellant, *vs.* Nashawannuck M'f'g Co. *et al.*, defendants and appellees. Citation. Dickerson & Dickerson, complainant's sol's, Temple Court, New York. Service of a copy of the within citation is hereby admitted. Dated N. Y., July 16th, 1886. Wetmore & Jenner, def'ts' sol's. U. S. circuit court. Filed July 16th, 1886. Timothy Griffith, clerk.

166 [Endorsed:] Supreme Court U. S. 1889, October term. No. 177. Abraham Shenfield, app'l't, *vs.* The Nashawannuck Man'f'g Co. *et al.* Agreed record.

[Stamped:] Office Supreme Court U. S. Filed Feb. 3, 1890. James H. McKenney, clerk.

Supreme Court of the United States,

OCTOBER TERM, 1890.

No. 19.

ABRAHAM SHENFIELD,

Appellant,

vs.

THE NASHAWANNUCK MANUFACTURING COMPANY, CHRISTOPHER MEYER, PRESIDENT; GEORGE H. NEWMAN, TREASURER, AND E. E. CANDEE, AGENT.

BRIEF FOR APPELLANT.

Evening Post Job Print, New York.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 19.

ABRAHAM SHENFIELD,
Appellant,

vs.

THE NASHAWANNUCK MANUFACTURING COMPANY *et al.*

BRIEF FOR APPELLANT.

This is a suit under a patent for suspender ends.

In the Court below two defenses were raised to the patent: one, non-patentability upon the face of the patent, which the Court sustained; the other, an alleged prior use in Philadelphia by one Altmann upon which the Court did not pass, and which by consent of counsel has been eliminated from the present record so as to present to your Honors the simple question of patentability.

The patent itself is to be found at page 56 of the record. It is for a suspender end constructed in a particular way. The claim of the patent is for a very narrow and strictly limited invention. It is for what may be called an article of manufacture, separate from the suspender itself; and it consists of two pieces of flat braid of sufficient length, bent

around to form loops at their middle, and the four ends brought together so as to be embraced in a bight or fold of leather. The inner adjacent edges of the folded braid are likewise to be attached together, by sewing or otherwise, so as to form the loop of the buttonhole. In the form shown the attaching leather which embraces the ends of the straps passes through a ring of metal, which ring of metal is in the form shown, hooked to the suspender by a hook forming part of the buckle. The claim of the patent is :

> "The suspender end made of a flat cord or "strip of fibrous material bent into a loop, laid "flat-wise, united at the inner edges 3 and "connected to the attaching pieces *d*, as set "forth."

The flat looped ends, attached together at their inner edges, and the leather serving the double purpose of an attachment of those ends to the suspender proper and of a protector or cover for the raw edges of those ends, are as a structure entirely new so far as the records in this case show. The invention in this case is, of course, not of the broadest kind, but is one which has proved of great utility and been very generally adopted in the better classes of suspenders.

The patent itself sets out that suspender ends of leather or felt, jean and similar materials had been previously made with a hole cut for the button in the material. Likewise that suspender ends had been made of a round cord "with the ends turned back and fastened to form loops, but this round cord is objectionable as it does not lie flat against the person or beneath the buttons."

In the corded end suspenders with which your Honors are no doubt familiar, the end of the cord was bent around to form a loop and fastened to itself, generally by a metallic fastening. The doubled

end was not taken up to the support of the suspender end, but a single part of the cord stretched from the button to such support. In addition to this acknowledgment in the patent, the articles shown in anticipation and which are nearest to the patent are, we believe, a crochetted single suspended end shown at page 86 of the record. This structure appears upon its face to be an exceedingly intricate one in its construction, and whether or not it is a feasible one to be made has not been testified to by any witness. In any event, it does not show any flat braid. It does not show any attaching piece embracing and protecting the doubled ends of said braid, and it does not show a suspender end within the meaning of the Shenfield patent at all. It simply shows the back strap of a suspender.

Perhaps one or two pairs a year might be made by an industrious woman.

There is also to be found at the foot of page 61 a stipulation on the part of the counsel in the case that what were known as frogs were old. These frogs are no doubt entirely familiar to your Honors, and were used upon outer garments, generally of fur, and consisted of a strip of flat braid bent together to form a loop, and having the inner edges sometimes attached together, the rough ends of which were attached to the garment and were generally concealed by a rosette sewed over them.

These we believe to fairly represent the state of the art as presented in the record and in the court below, and with reference to them your Honors will have to decide the simple question of patentability of the invention, for there is no question of infringement, the defendants' article being practically that of the patent, the attaching of the inner edges being done by a metallic fastener instead of sewing.

Infringement was duly proved by Mr. Serrell (fol. 11) and is undenied by any witness. It is likewise to be observed that patentability has been denied by no

witness in this case, nor has any anticipation of the patent been alleged by any witness.

History of the Patent.

Upon the question of patentability, the history of the patent will shed some light. In the first place, the question of patentability was fought out before the Examiner in the usual way, the patent having been rejected when applied for broadly for a doubled loop (p. 65), and allowed when the claim was limited to the specific structure now before your Honors (p. 66). Thereafter, a very extensive interference was fought between Shenfield, and Schirmer and Betts, the record in interference being offered in evidence at folio 76; the printing of this record having been waived (fol. 79). This Schirmer and Betts interference, fought through the courts of the Patent Office as it was, gives an additional presumption of validity to the patent over that which the patent has from its issue alone, for in the interference the applications come before a different set of judges than those in the examination rooms, and if at any time the Board of Examiners or the Commissioner discovers that the invention is upon its face lacking in patentable novelty, a direction will be made to the Examiner to refuse the issue of the patent.

After the Shenfield patent issued, and subsequent to the the Schirmer and Betts interference, a suit was commenced against Schirmer and Betts under the present patent, which was brought to hearing before his Honor Judge Wallace in 1884, and decided by him (21 Federal Reporter, 241), holding, in substance, that the defendants did not infringe in that case, because their ends were not made of flat braid bent around, but braided cords braided together into the end and forming an integral portion above the buttonhole, which his Honor held to be a different invention from that of the patent.

Thereafter, and upon that decision, a motion for injunction was brought against the defendants in the present suit before his Honor Judge Wallace, and was opposed by Mr. Wetmore, who was supported by Mr. Henry L. Brevoort as his expert, and numerous witnesses as to facts. After a full argument, the defendants were enjoined (fol. 85). Thereafter, the defendants amended their answer (fol. 99), and a motion to vacate the preliminary injunction was made, and again fully argued before Judge Wallace and denied by him (fol. 88).

We have here a plain decision by his Honor Judge Wallace confirming the patentability of the Shenfield patent as against the same defendants, and the same counsel now before your Honors.

The present suit, however, came on to be heard before Judge Shipman, and the invention was held by him not to be patentable, in view of the fact that a round cord had been used in suspender ends, and in view of the fact that frogs were old for fastening garments (fol. 152). His Honor, however, could not find, nor can your Honors find, that the specific combination claimed in the claim was old in any art. A piece of leather was old; flat braid was old. Flat braid had been looped to form a buttonhole. A suspender end made of a piece of round cord having the ends doubled around and attached to the standing part of the cord was old. And from those facts Judge Shipman held that there was no invention in the patent in controversy.

The General Use.

Though the general use of a patented article after a patent is, of course, not conclusive on the question of patentability, it has frequently been held by your Honors to be persuasive in that direction.

The ends of the patent are not classed with the cheapest grade of suspender ends, such as those

made of leather, but with the more expensive kinds of which a great variety was known, and these ends have been very largely displaced by the ends of the patent, the testimony showing that in some instances at least as much as fifty per cent. of the entire business of certain houses was in selling these patented ends.

As to the advantages of this end, Mr. Bernheimer testifies that among them was to be found its beauty, durability, neatness, ease to get on the button, and that it lays flat against the garment (fol. 70).

And again, Mr. Maidhof, an experienced suspender expert, testifies that among the advantages were to be found "durability; and you could put it on much easier than you could leather. It was softer to the touch" (Q. 13, fol. 35).

The complainants in the suit proved that, commencing in 1875, when their business commenced with less than two thousand dozen suspenders, it had increased up to 1885, notwithstanding numerous infringements, to a sale of about 54,000 dozen suspenders, amounting in the years from 1875 to 1886 to 3,136,728 pairs of suspenders (p. 50). This statement shows certainly a wonderful sale of this patented improvement.

Mr. Brown, the representative of Bates, Reed & Cooley, testifies that he represented one of the largest houses in New York; that these braided, or silk ends, as they are generally called, were very well received from the start; took a leading position in his line of suspenders, and that "I think that inside of a year nearly half of my suspender trade was on silk cord ends" (fol. 14).

Mr. W. W. Taylor, who carries on business for himself, testifies that the Shenfield ends were received very favorably, and were to a large extent preferred by the trade to the other kinds of suspender ends on the market (fol. 16), and that there has been a large demand in the trade for them (fol.

16), and that one reason of their great demand was because of their great durability (Q. 12, fol. 16). Mr. Taylor's business amounts to from 25,000 to 30,000 dozen suspenders annually (fol. 19).

Mr. Oppenheimer, a wholesale dealer in gentlemen's furnishing goods, of the firm of Neustadter Bros., testifies that these ends "were a success from the start," and have driven out, if not entirely, very much the other makes of fine suspenders in our market, and that they were given the preference at the same price over other suspenders (fol. 22), and he further testifies that from a certain price upward his firm always gives the braided end the preference (fol. 26).

Mr. Kauffer testifies that he is connected with the business of Oberndorfer & Co.; that the patented ends were very favorably received by the trade, and that "they have displaced and been preferred to other kinds of suspender ends, particularly those of the better class," and that he sells of the better class of suspenders fully nine tenths of the braided ends (fol. 28), and that because they are "neat and very strong, stronger than any other end in use," and that a good many of his customers will not buy any other ends (Q. 15).

Mr. Maidhof testifies that he has general charge of the business of the American Suspender Company, which is probably the largest suspender business in the United States, certainly is only second to the defendants. He states that the braided end was very favorably received by the trade (fol. 34), and that by reason of this braided end the National Suspender Company became decided competitors in the suspender business; and he also heard through the trade that the end was a good thing in the way of not soiling the shirt (fol. 35) and had the other advantages previously referred to.

Mr. Bramhall, representing the very extensive firm of Robert K. Davies & Co., testifies that the

braided end was received as a novelty, and very favorably, and that it acquired "a reputation as being a good and practical end. It has acquired a great reputation. Met with large sales," and that this end "displaced many others of the better grade of suspenders," and that by reason of this end the National Suspender Company (practically the complainant in the present suit) became formidable rivals (fol. 41), and that his house sold of the better class of suspenders about 50 per cent. of the braided end (fol. 47).

Mr. Marcus testifies that he is in the suspender business and familiar with it; that the braided end was looked upon very favorably, and was a good wearing and lasting end, and that it affected the sale of other suspenders; and was very much better than any other end produced (fol. 51).

Mr. Bernheimer testifies that in the business of the National Suspender Company, "In the higher "grades of suspenders, I think it fully decreased "the sales of the other ends three-quarter. I mean "by decreasing the sales of the other ends, we sold "fewer suspenders than before of the better grade, "which were provided with web ends, leather ends, "or cloth ends.

"Q. 12. As I understand you, then, suspenders "provided with the loop braid ends took the place "of suspenders provided with the other ends; is "that correct?

"A. Exactly so.

"Q. 13. Please to state how this looped braid end "of the National Suspender Company was received "by the trade?

"A. With very great favor; and, as I said before, "our business was materially increased thereby" (p. 46).

Mr. Bernheimer likewise testifies that these ends especially affected the sale of the higher grades of goods (fol. 69).

Mr. Mesick, a salesman of the National Suspender Company, testifies that the trade looked upon these ends as being one of the best things that was ever shown in the market as a suspender end, and that of the better class of goods, he judged, from fifty to seventy-five per cent. were of the class referred to in the patent (fol. 81).

To all this evidence defendants make but two replies. They show that some of the ends classed as silk braided ends were of the kind shown in Fig. 2 (p. 58 of the Record), in which the sides of the braid, instead of being parallel all the way down, was doubled over at the end. Certainly the force of the argument is in no way affected by that fact. These ends are as much within the patent as those with parallel sides.

In the second place, they show that in the total sales of two houses, namely, H. B. Claflin & Co. and Teft, Weller & Co., the proportion of braided ends to the total ends was small. These houses were general importers and sellers of all kinds of ends, and comparison was made with a cheaper grade of goods, with which the silk ends did not come into competition.

Mr. Candee, the manager of the defendants, likewise testified that in his business the braided ends formed but a small proportion.

Certainly, this evidence is not material, and in no way meets the evidence given for the complainant showing general utility and adoption.

The evidence is undisputed that in the higher class of suspenders the proportion of the patented ends sold to the total product has been about 50 per cent.; and it is no argument to say that they are but a small per cent. of the total number of suspenders of all grades sold. Suspenders are made and sold at wholesale at a few cents a pair. With them, of course, the braided ends never come into competition; and it is no argument to say that of the total

number of ends the braided ends form but a small percentage. It is as though a man had made an improvement in a four-in-hand coach, and the proof was that in that class of coaches the patented ones had been adopted to a very large extent, and that argument was attempted to be answered by showing that of all the vehicles in the world, wheelbarrows and grocery carts and what not, the per cent. of the patented vehicles was exceedingly small. The answer totally fails.

Patentability.

There is no question which counsel in patent causes are called upon to present and which involves so much difficulty as the question of what does or what does not constitute invention. It is not one of the defenses especially pointed out in the statute, and for a long while that which was new and useful was considered patentable. Under the present decision of your Honors, in addition to novelty and utility, there is required in order to sustain a patent, the exercise of that intuitive faculty called invention as distinguished from mechanical skill. These decisions have made the burden of sustaining a patent heavier for the patentee than was the case before. But, at the same time, in almost all the cases in which this defense has prevailed, there has been in the structure patented a lack of legitimate combination; that is, a lack of that interaction of the parts in which, each affecting the operation of one or more of the others, the whole unite in the carrying out of the desired result.

In the present case that argument cannot be made. The three parts of the combination, the two looped ends and the leather cap, are all combined most intimately. The cap both supports the looped portions of the end and simultaneously protects and conceals the rough edges, preventing the

same from raveling, and making a more sightly product. The ends themselves balance each other in their support, as the arms of a scale balances around its pivot. The end differs radically from that form of end in which a hole was cut in a fabric and the support of the button was upon the filling threads held in position only by friction.

In the present structure the strength of the buttonhole, which is the wearing part, is the entire strength of the longitudinal threads. The flat braid in combination, especially with the small flat button generally used in connection with suspenders, performs there a most desirable function, affording a very great strength of braid at the point where it is most desired, at the same time not tending to force the button from its supporting threads. The flatness of the braid at the upper ends enables it to be inserted between the two sides of the leather, and to be firmly attached there, without an undue thickening of the support at that end. While, at the same time, the raw ends of the braid are protected and covered and prevented from raveling by the leather cap, and this is a very important part of the invention, for in the previous forms of suspender end, where a woven fabric was employed, the raw end was generally required to be bound by some separate and more or less expensive device to prevent its raveling, while this device at the same time performed no other or further function than the mere protection of the end of the fabric, not aiding in the support. The material of which the end is formed is durable, attractive to the eye, and not liable to stain the garment or person of the wearer when affected by the moisture of the body, a condition not existing in the exterior frogs used upon garments. It is capable, likewise, of ornamentation, and of being made in various colors and shades of color.

The fact remains, whatever the argument upon

the question of patentability may be, that until the patent of Shenfield, these ends were entirely unknown. That as soon as they were patented and introduced they became known everywhere where high-class suspenders were used. They are to-day a matter of such common notoriety that your Honors are, no doubt, individually informed that they can be found in every shop dealing in that class of goods in the United States; and yet not one was known before the Shenfield patent. The number of goods shown in the reports before your Honors as made under this patent is but small in proportion to the number now used since the right to an injunction has been refused by Judge Shipman. Certainly, this fact must have some weight on the consideration of the question of patentable novelty.

How easy it is to say, when a thing is done, that it might readily have been done. Especially is this true of simple articles; and yet they are frequently the very last ones to be made in the advance of the arts. There was no great mental effort in the production of the child's toy of the ball and elastic cord, and yet we all know how, when made, it reached, almost immediately, an enormous sale. A man might readily say elastics were known, balls were known, and that there was no mental effort whatever required in making that combination.

A hungry man will generally eat; and if a hungry man when supplied with food, promptly and thoroughly consumes it, it should require a very forcible argument to prove that he always had had the food before, but simply had not desired to eat.

The question of invention in any individual case is one very difficult to reason about under the present decisions. There is no criterion, excepting the individual Judge, and if the criterion is to be the belief of that individual Judge as to whether he could have made a patented thing if the necessity

had been presented to him, then, obviously, it is for the interest of patentees to have unintelligent men upon the bench. But when his Honor Judge Wallace, under circumstances in which every intendment was against the patent, granted and reaffirmed a preliminary injunction against the present defendants and against the present counsel, we have a right to say to your Honors that the argument against patentability should be very strong and conclusive in order to prevail.

In citing some of the cases referring to the question of invention, I make mention first of your Honors' decision in *Smith* vs. *Goodyear Dental Vulcanite Company* (93 U. S., 495), where your Honors say with approval:

> " Webster on the subject matter of patents
> " (page 30), says: 'The utility of the change,
> " ' as ascertained by its consequences, is the real
> " ' practical test of the sufficiency of an inven-
> " ' tion; and since the one cannot exist without
> " ' proof of the existence of the other, the exist-
> " ' ence of the one may be presumed on proof
> " ' of the existence of the other. Where
> " ' the utility is proved to exist in any degree,
> " ' a sufficiency of invention to support the pat-
> " ' ent must be presumed.' "

Then, in the Circuit Court cases, I may call your Honors' attention to the case of *Thayer* vs. *Spaulding* (26 Federal Reporter, 66), relating to base ball masks, decided by Judge Blodgett. In that case a mask was the subject of the patent ; the mask being intended to protect the face of the player against the flying ball. The mask was in substance only the thing known before as a fencing mask, but it had this difference, at the upper and lower ends of the mask were pads adapted to rest against the face of the player—against the forehead and against the chin. Such pads had been used in connection with fencing masks in a very limited way. The Judge

discusses the question of invention quite fully and he says :

"The old fencing mask offered in evidence "shows no head-rest, and as Thayer seems to "have been, from the evidence, the first in the "art to show a rest for the forehead in a mask "intended to protect the face, it seems to me "that he had a right to cover and does cover by "his patent the forehead-rest broadly and not "the special means by which he fixed it to the "wires of the cage.

"What I have said about the forehead-rest "of the two devices will apply to the chin-rest. "Thayer's chin-rest is supported in place by "bracing wires, attached to the front wire or "frame of the cage; while the defendant's "is supported by being attached to the side "wire. But, as both the defendant's head and "chin rests perform the same function as that "performed by the same elements in the patent "and no other, they must be treated as equiva-"lents for the rests covered by the patent.

"As to the second point made, that this de-"vice is nothing but the old fencing mask, "there seems to be a patentable difference be-"tween the two devices, in the use to which "they were to be applied, and also in the ele-"ments of which they were necessarily com-"posed. The fencing mask required no head-"rest, and no such chin-rest as was required "for a base ball mask. In some respects it "may be said that the devices are analogous in "their use, but there seems to me to be enough "difference between them to make that differ-"ence patentable. The first claim of the pat-"ent is for the combination of the face guard, "and the forehead and chin rests; and the sec-"ond claim is for the open cage provided with "a forehead-rest. The fencing mask did not "show these rests in any form and they were "not required for that purpose.

"It is urged that the fencing mask shows a "chin-rest, but it is in fact a mere pad evi-"dently to prevent abrasion of the chin by the "wire frame."

Again, I refer to the case of *Strauss* vs. *King*, a very elaborate and important case, decided by Judge Blatchford, in 18 Blatchford, 88. In that case all that was done was for a man to put a rivet in the corner of a pocket. Pockets before that time had been fastened with pieces of leather, had been fastened by sewing, had been fastened by all kinds of attaching pieces at the corner. Rivets were well known for fastening articles of wearing apparel even; they were used in coats, but they never had been used in that particular position. No rivet had ever been used at the corner of a pocket to strengthen the pocket and improve it at that poidt. Judge Blatchford says:

> "On the point that there is no invention in
> "the thing patented, the defendants contend
> "that the want of patentability consists in the
> "fact that the invention is nothing more than
> "the employment at the corners of a pocket
> "opening of the old and well known rivet; and
> "that no new function is performed by the
> "rivet in that place from what is performed by
> "it in any other place. The invention is
> "claimed as an improvement in the pocket
> "opening of a garment which has a pocket
> "opening. It does not extend to anything but
> "a pocket opening."

Then I refer your Honors to the case of *Lindsay* vs. *Stein*, a very important case, reported in the 10th Federal Reporter, 908,—the sleeve supporter case. I am citing, so far as may be, cases in relation to garments, and cases analogous to the present one. This case was on a patent for a sleeve supporter, which consisted just in this: In putting at two ends of a band, a spring clasp, a biting clasp, to hold up the sleeve. That was all there was to it. There were the greatest variety of sleeve supporters which had hooks in them and

which had biting devices of various kinds, but not two-spring biting devices; and there was patented before the date of this patent a sleeve supporter which had a hook at one end and a spring clasp at the other; identically the thing of the patent, but it had the clasp only at one end. The invention consisted in putting the spring clasp at both ends of the strap —that and that only. Clasps at both ends of a strap were old. A spring clasp and another kind of a clasp at the two ends of a strap were old. The invention consisted simply in that. When I say to your Honors that the case was thoroughly contested, several times over on different aspects, before Judge Blatchford, and Judge Blatchford finally sustained that patent in an elaborate opinion, your Honors will believe that the question of invention was pretty thoroughly presented to him.

Again, the case of Bogart *vs.* Hinds, 26 Fed. Rep., 149. This case was for an improvement in apparatus for lighting a gas jet by introducing a current of electricity, and the claim was this:

> "An insulated gas-burner having its insulated
> "section of or from glass or similar vitreous
> "material, substantially as and for the purpose
> "specified."

It was one of these little burners which are to be lighted at the tip by electricity. A current is led there from a distant source and the lighting is done; the wires being insulated upon the burner tip. The invention consisted simply in insulating the wire by means of the glass of the burner itself. That is what the invention was, and that was what the claim was. The Judge says:

> "The patentee was not the first to discover
> "the peculiar value of such material for insu-
> "lating purposes in gas-burners intended for
> "use in electric gas-lighting apparatus, and the

"novelty of the claim would be negatived by "the patent to Bean and Mumler of June 4, "1867, and the patent to Barbarin of June 1, "1869. On the other hand, upon correct prin- "ciples of construction, the claim should not be "limited to an insulated burner having all the "details of construction which are described in "the specification of the patent. The second "claim of the patent makes various details of "construction constituents of the claim. Clearly "these details are not to be incorporated into "the comprehensive language of the first claim. "Such a construction, in view of the prior state "of the art, would also unduly narrow the "scope of the real invention of the patentee.

"The essential novelty of the patentee's in- "vention consists in selecting an appropriate "insulating material, and making from it the "upper part of a gas-burner which will serve "both to support and insulate the electrical "conductors, and as a gas-way from the gas- "pipe to the place where the spark is communi- "cated to the gas. The patent to Arnold and "Irving, of March 12, 1867, shows an entire "gas-burner made of substantially the same "material as that employed by the patentees. "This gas-burner, however, was made with no "thought of its utility for insulating purposes in "an electric lighting system. It was an ordi- "nary gas-burner. Other inventors had in- "serted insulating material in the electric "lighting burners, employing independent in- "sulators and independent insulated sections. "By substituting a burner similar to that of "Arnold and Irving, and making a slight modi- "fication in its exterior construction, so as to "form a shoulder upon which the electrical "conductors could be firmly and securely "fastened, the patentee was enabled to dispense "with the complicated parts employed by those "who preceded him, and made a simple, com- "pact, and efficient burner, which would serve "both as an insulator for the conductors, a gas- "way for the metal pipe to the point of igni- "tion, and a firm support for the conductors."

I refer your Honors to a decision by Judge Blatchford, in Strong *vs.* Noble, 6 Blatchford, 477. This is somewhat an early case in regard to whips. I read the head-note, which is the statement of the decision, and in substance correct :

> "The invention covered by Letters Patent
> "granted to Henry A. Strong and Edmund F.
> "Woodbury, December 18, 1866, for an 'Im-
> "provement in whips,' on the invention of
> "Woodbury is a patentable invention.
> "Although a tubular knit fabric was old, and
> "although a whip was old, and although the idea
> "of covering a whip and a whip-handle with
> "something was old, the application, in the
> "manner shown in that patent, of such a knit
> "fabric to the covering of a whip, to produce a
> "whip or a whip-handle covered with such a
> "fabric, substantially as described in that
> "patent, was not merely applying such knit
> "fabric to a new use, in the sense in which, in
> "the law of patents, the mere application of
> "an old article to a new use is held not to be
> "the subject of a patent."

I find no case which seems to me to be a more satisfactory statement of the law than the decision by Judge Shipman and Judge Coxe in Celluloid Manufacturing Company *vs.* Chrolithion Collar and Cuff Company, 25 Fed. Rep., 482.

The patent in that suit was for the application of the celluloid fabric to that particular use. The Court say:

> "What they did in the adaptation of this new
> "and untried material to a fabric which can be
> "used for collars and cuffs, required, in our
> "judgment, the exercise of the inventive faculty,
> "and not mechanical skill merely.
> "It was, to use the language of the Supreme
> "Court in Smith *v.* Goodyear, 93 U. S., 494, a
> "new fabric, 'differing from all that had pre-
> "'ceded it, not simply in degree of usefulness
> "'and excellence, but differing in kind, having

"'new uses and purposes.' We do not regard "this as a great invention, but we do consider "it a very useful one. The patentees supplied "a public need. They made what men wanted. "They produced what had not been produced "before, and they should not be deprived "of the fruits of their invention by "the vague and general language and "nebulous claims of the foreign patents re- "lied on. To use again a well-worn simile: A "company of sportsmen enter a copse in search "of game. A bird arises, seen plainly by a few; "the others catch but a passing glimpse. "Several shots are fired, some wide of the mark, "others dangerously close. The pursuit begins, "and continues with varying fortune. The "coveted bird is wounded by one of the sports- "men, and is almost within the grasp of an- "other; but he alone who finally brings down "the game is entitled to place it in his pouch. "The motion must be denied."

I quote likewise the case of Palmer *vs.* Johnston, 34 Fed. Rep. 337, in which Judge Wallace says:

"Cowell's improvement was a very simple "one, and it is easy to assert now that any com- "petent mechanic in that department of in- "dustry could have made it by the exercise "of ordinary mechanical skill. Indeed, it "seems surprising now that no one had made "it; but no one had, although many kinds of "pulley boxes had been made, and some had "been patented; and as soon as this one was "made and introduced its advantages were "manifest, and it commended itself to the pub- "lic as a practical and desirable device, and a "better one than those which had preceded it. "These circumstances afford a safer criterion "of inventive novelty than any subsequent "opinion of an expert or intuition of a judge.

"The defendant has appropriated the inven- "tion of the Cowell patent, and a decree is "therefore ordered for an injunction and an "accounting."

It is again a noticeable fact in this case that the defendants have chosen to call no witness to show that the thing of the patent was old or did not involve invention.

Now it may be a question as to whether, when that defense is to be pressed, some evidence should not be presented in support of it. In this case, at least, all the testimony and all the presumption is in favor of the patent.

In view of the foregoing facts, we respectfully urge that the decree at Circuit was erroneous.

E. N. DICKERSON,
For Appellant.

SUPREME COURT OF THE UNITED STATES.

ABRAHAM SHENFIELD,

Appellant,

vs.

NASHAWANNUCK MANUFACTURING CO., ET AL.,

Respondents.

No. 19. OCTOBER TERM, 1890.

BRIEF FOR RESPONDENTS.

WM. A. JENNER,

Of Counsel for Respondents,

45 WILLIAM STREET,

New York City.

C. G. Burgoyne, 146-150 Centre Street, N. Y.

Supreme Court of the United States.

ABRAHAM SHENFIELD,
Appellant,

vs.

THE NASHAWANNUCK MANUFACTURING COMPANY ET AL.,
Respondents.

BRIEF FOR APPELLEES.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York dismissing the bill of complaint of the appellant with costs.

The suit was brought for infringement of United States Letters Patent granted to Abraham Shenfield, the appellant, dated November 9th, 1875, No. 160,855, for an improvement in suspender button straps, and was heard upon the pleadings and proofs.

The suspender-end described in the specification is "made of a double flattened cord or strip bent around "into a loop and united together, leaving sufficient of "the loop open to form the button-hole. At the other "end the suspender-end is united to a buckle or clasp

" by a loop or folded piece of leather or other material " stitched to the suspender-end." The drawing shows the latter method of attachment, *i. e.*, the braid is united to a folded piece of leather or cloth.

The claim is " the suspender-end made of a flat cord " or strip of fibrous material, bent into a loop, laid flat- " wise, united at the inner edges 3, and connected to " the attaching-pieces *d*, as set forth."

The specification and drawings are found at page 56, of the record.

The suspender-end, claimed to infringe the patent, was also made of double-flattened cord or strip, bent around into a loop and united together at the inner edges, leaving sufficient of the loop to form the buttonhole, and connected to an attaching piece similar to *d*, but the inner edges were united by sewing the edges of the braid together at intervals, and, in addition, a metal pin was thrust through the braid immediately above the buttonhole and the ends of the pin were folded back and clinched.

See Complainant's Exhibit Defendants' Suspender, p. 6.

The principal question is whether appellant's patent describes and claims a patentable invention, and the respondents urge that the patent is void because the thing described and claimed is without patentable novelty.

1. The specification itself states, respecting the prior state of the art, as follows:

" Suspender-ends have been made of leather, felt, jean " and similar material, with the buttonhole cut in the " same, and in most instances the materials have been " pasted together, in addition to lines of stitching sur- " rounding the buttonhole."

" Suspender-ends have also been made of a round

"cord, with the ends turned back and fastened to form "loops; but this round cord is objectionable, as it "does not lie flat against the person or beneath the "the buttons."

2. Irrespective of this admission made in the specification, it is undisputed that suspender-ends had been made of flat material and the advantage of flatness was well understood.

See the Patent to Flagg, dated November 25th, 1873, page 75 of the Record.

Patent to Canfield, dated December 16th, 1862, page 72 of the Record.

Patent to Hotchkiss, dated 1854, page 72 of the Record.

3. Suspender-ends had also been made of flat material, the inner edges of which were united by stitching just above the buttonhole and so as to form the buttonhole (see patent to Hotchkiss, dated 1854, page 72 of the Record).

4. Suspender-ends had also been made by folding a piece of cord so as to form a loop and uniting the inner edges by a clamp just above the buttonhole and so as to form the buttonhole (see the patent to Hotchkiss, dated 1851, page 70 of the Record).

5. It was also common to unite the suspender-end to attaching pieces of leather or cloth. Illustrations of this are seen in the Briggs patent of 1848 (page 69 of the Record), and the Canfield patent of 1862.

6. It was also admitted (p. 61, Record) that "prior "to the year 1870 there had frequently been publicly "used in the manufacture and wearing of cloaks and "jackets button-loops formed of flat braid bent edge-"wise upon itself and sewed together at the meeting

" edges, leaving an opening for the buttonhole at the " bend; that the ends of the braid in such button-loops " were permanently attached to a button or like device " which was affixed to one side of the body of the " garment, and that the button-loop held the garment " together by being buttoned on to a button or like " device sewed to the other side of the garment, and " that when in use the braid forming the button-loop " rested under the button, and that such braids were " made by machinery."

7. There were also in the art towel-loops, such as were shown in "Harper's Bazaar," 1868. These were crocheted of fine cotton, as shown in the illustration and described at page 62, Record.

8. There was also shown and described in "Harper's Bazaar," in 1871, a crocheted suspender end united at the inner edges just above the buttonhole and attached to a crocheted attaching piece (see page 86, Record).

It thus appears that every part of the Shenfield suspender-end was old and that the different parts had been assembled together just as he assembled them and for the same purpose.

A suspender-end is merely a button-loop, and whether the loop surrounds or buttons onto a button upon the trousers, or buttons onto a button upon a cloak or on to a nail from which a towel may hang; in each case the function of the thing is the same, and is performed in the same way.

The suspender-end of the Shenfield patent is merely a button-loop formed of flat braid (cord or "other fibrous material) bent edgewise upon itself and sewed together at the meeting edges, leaving an opening for the buttonhole at the bend" which is exactly what had been commonly used in cloaks and jackets. To attach such loops to a pair of suspenders to be still used as

button-loops is scarcely a case of "double use." It is the identical use.

To connect such loops with the suspenders through the intervention of an "attaching-piece" did not give to the loops when thus connected with the suspenders patentable quality, which was lacking before. The loops when connected with cloaks and garments had commonly been connected to the garment through the intervention of a button used as an attaching-piece; that is, the ends of the loop were attached to a button, which latter was attached to the garment, thereby securing and concealing, by the button attaching-piece, the ravelled ends of the braid, leaving the loop end free. This was, in substance, the attaching-piece of the Shenfield patent, which is not confined to any special form or appearance; but the attaching-piece of the Shenfield patent was in form and appearance old. The Briggs patent of 1848 (page 69, Record), and the Canfield patent of 1862 (page 73, Record), show exactly the attaching-piece of the Shenfield patent, and used exactly as Shenfield describes it. There was no invention in substituting the old Briggs attaching-piece for the button-attaching-piece of the old cloak button-loop.

The Shenfield suspender-end is also exactly found in the crocheted suspender-end shown in "Harper's Bazaar" of July 22d, 1871 (page 86, Record).

This illustration shows and describes a thing intended to be used as a suspender-end.

It is made of a "flat strip of fibrous material," and is bent into a loop, laid flatwise," the inner edges are united and the end is connected to an attaching piece, as in the Shenfield claim.

It is of no consequence that the bending into loop form is done in the course of constructing the flat strip. The result is the same, however it is made.

Thompson vs. Boisselier, 114 U. S., 1.
Vinton vs. Hamilton, 104, 485.
Hall vs. MacNeale, 107, 90.
Burt vs. Evory, 133 U. S., 349.

In Vinton vs. Hamilton, where a cupola furnace being old, and a cinder notch being old, and the use of the cinder notch to draw off cinders from a blast furnace being old, and the cinder notch, in drawing off the cinder from a cupola furnace, performing the same function as in the blast furnace, it was held that the application of the cinder notch to the cupola furnace would occur to any practical man, and there was nothing patentable in such application. In Hall vs. MacNeale, 107 U. S., 90, a cored conical bolt, in a safe with a screw-thread on it having existed before, and also a solid conical bolt, it was held to be no invention to add the screw-thread to the solid conical bolt.

In Burt vs. Evory the Court held, in conformity to the authorities, that the combination of old devices in a new article without producing any new mode of operation is not an invention.

As seen, the Shenfield suspender-end is not even so high in the scale of invention as the combination of old devices in a new article. The old button-loop used to fasten cloaks, had every element including the attaching piece. The court below held that the connection of the end to the attaching piece gave no patentable character to the loop (see p. 88, Rec.); but the Court might have gone further, because the old loop did have an attaching piece though not of the precise form shown in the Shenfield patent, but precisely the same in function, and the precise form shown in the Shenfield patent was old.

Commercial Success.

Complainant has introduced much evidence to show increasing sales of the Shenfield supender-ends, but patentability cannot be established by the fact of commercial success.

Suspenders provided with ends such as are described in the Shenfield patent constituted a very small percentage of the aggregate sales of suspenders, and, so far as the defendants' sales are concerned, although the percentage of braided ends diminished from year to year, thus in 1885, out of more than 500,000 dozen pairs of supenders, less than one per cent. was provided with the braided ends. In 1884 the aggregate sales were 400,000 dozens, of which three per cent. were braided ends, thus showing that the sales of braided ends were in decreasing proportion. The complainant's sales in four months of 1886 amounted to 19,000 dozens, but this, it will be seen, is a very small proportion of the total sales of suspenders, for during the same period the defendants sold over 200,000 pairs of suspenders, of which less than one per cent. were provided with braided ends (pages 83 and 84 of Record).

Furthermore, the complainant's sales included ends made, not under the patent in suit, but under a patent dated May 22d, 1877 (see page 58 of Record), which also were provided with braided ends, but of a somewhat different kind than those described in the patent in suit, and the suspenders provided with the suspender-ends which were the subject of the 1877 Patent were included without any separation in the statement of the sales, from which complainant asks the Court to infer patentability because of commercial success (see page 49 of Rec.).

It may be that a very large proportion of the sales of the braided-end suspenders, testified to by the complainant or his partners, were not provided with ends made under the patent in suit at all, but under the subsequent patent of 1877. It is also apparent that the sales of the braided-end suspenders may be accounted for by the business energy of the manufacturers,

or the excellence of the goods in respect of unpatented features.

Respondent respectfully submits that the decree of the Circuit Court should be affirmed.

WM. A. JENNER,
Of Counsel for Respondent.